The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Flores, Chair
Senator Farmer, Vice Chair

MEETING DATE: Monday, January 13, 2020
TIME: 3:30—5:30 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 566** Bracy (Identical H 761)	Prohibited Discrimination; Citing this act as the "Creating a Respectful and Open World for Natural Hair Act" or "CROWN Act"; providing that it is unlawful for sponsors under the Florida Housing Finance Corporation Act to discriminate against any person or family because of a protected hairstyle; defining the term "protected hairstyle"; adding protected hairstyle as impermissible grounds for discrimination with respect to specified unlawful employment practices; prohibiting discrimination based on protected hairstyle in the Florida K-20 public education system, etc. CA 01/13/2020 Fav/CS JU RC	Fav/CS Yeas 3 Nays 1
2	**CS/SB 580** Judiciary / Bracy (Similar H 349)	Uniform Partition of Heirs Property Act; Creating the "Uniform Partition of Heirs Property Act"; providing requirements relating to the court determination of heirs property; providing for the determination of property value; providing for buyout of cotenants; providing for sale of property through open-market sale, sealed bids, or auction; authorizing certain cotenants to agree to certain partitions of real property, etc. JU 11/12/2019 Temporarily Postponed JU 12/10/2019 Fav/CS CA 01/13/2020 Fav/CS RC	Fav/CS Yeas 3 Nays 0
3	**SB 630** Mayfield (Compare H 457, CS/S 670)	Regulation of Smoking; Authorizing municipalities and counties to further restrict smoking within the boundaries of certain public parks, etc. CA 01/13/2020 Favorable IT RC	Favorable Yeas 4 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 998** Hutson (Compare H 775, H 1339, S 818)	Housing; Authorizing a board of county commissioners to approve development of affordable housing on any parcel zoned for residential, commercial, or industrial use; requiring counties, municipalities, and special districts to include certain data relating to impact fees in their annual financial reports; providing the percentage of the sales price of certain mobile homes which is subject to sales tax; exempting certain mobile home park and mobile home subdivision owners from regulation relating to water and wastewater systems by the Florida Public Service Commission, etc. CA 01/13/2020 Fav/CS IS RC	Fav/CS Yeas 4 Nays 0
5	**SB 1072** Wright (Similar H 535)	Redevelopment Trust Funds; Providing an exemption from specified appropriation requirements to certain hospital districts for a community redevelopment agency that extends, on or after a specified date, the time certain set forth in a redevelopment plan, etc. CA 01/13/2020 Temporarily Postponed FT RC	Temporarily Postponed
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 566
INTRODUCER:	Community Affairs Committee and Senator Bracy
SUBJECT:	Prohibited Discrimination
DATE:	January 14, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 566 amends the Florida Civil Rights Act of 1992 to define "race" as "inclusive of traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles." Under the bill, a "protective hairstyle" includes, but is not limited to, hairstyles such as braids, locks, or twists. Currently, an individual's hair texture, such as curly or straight hair, is considered an immutable characteristic of one's identity and is protected from discrimination. However, this protection does not extend to an individual's hairstyle because it is considered a mutable characteristic, which is a product of personal choice.

This bill's definition of "race" and "protective hairstyle" is also incorporated in other sections of state law. The bill prohibits employers, landlords, real estate sellers, real estate financiers, Florida K-20 public education institutions, and certain parties receiving funds from the Florida Housing Finance Corporation from discriminating against an individual for racial traits and protective hairstyles.

The bill provides individuals a legal cause of action to allege that a party unlawfully discriminated against them based on any trait historically associated with race, including a protective hairstyle. An individual will be able to receive administrative remedies, equitable relief, and civil damages for claims of race discrimination, as well as discrimination of any trait historically associated with race, including, but not limited to, a protective hairstyle.

II. Present Situation:

Title VII of the Federal Civil Rights Act

Federal law protects certain classes of people from prejudice and discrimination as a job candidate and employee. Title VII of the Civil Rights Act of 1964 (Title VII) provides in relevant part that it is unlawful for an employer:

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin[1]

Title VII applies to employers with 15 or more employees, including federal, state, and local governments. Title VII also applies to private and public colleges and universities, employment agencies, and labor organizations.

Under Section 1981 of Title VII, an individual may bring a legal claim for discrimination in making and enforcing contracts.[2] In 1991, Congress amended Section 1981 of the Civil Rights Act to specify that prohibited contract discrimination also applied to employment contracts. This section provides in part:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.[3]

Title VII does not provide a precise definition of race or race discrimination. This omission requires the judicial branch to utilize canons of statutory interpretation to better define what characteristics of an individual Title VII protects as components of race, color, religion, sex, or national origin.[4]

Title VII Federal Jurisprudence for Hairstyle

The established view of courts is that Title VII only prohibits employment discrimination based on immutable characteristics.[5] An immutable characteristic is an individual trait that cannot be readily changed, such as race, color, sex, or national origin.[6] Alternatively, a mutable characteristic is a trait that involves personal choice. One may alter a mutable characteristic with

[1] 42 U.S.C. §2000e-2(a)(1)-(2) (2019)
[2] *Id.* §1981(a).
[3] *Id.*
[4] *See* EEOC v. Catastrophe Management Solution, 852 F.3d 1018 (11th Cir. 2016)
[5] *Id.*
[6] *Id.*

relative ease or personal choice. Examples of mutable characteristics are hair length,[7] grooming standards,[8] and language used on the job.[9]

In their 2016 Equal Employment Opportunity Commission v. Catastrophe Management Solutions decision, the Eleventh Circuit upheld an employer's right to condition employment on the alteration of a dreadlocks[10] hairstyle.[11] Although the employer did not specifically ban dreadlocks in the company's employment policies, the company required personnel to groom in a manner that projects a professional and businesslike image.[12] The Eleventh Circuit ultimately decided that the hairstyle was not a personal trait protected by Title VII. The court concluded that conditioning employment on the alteration of a particular hairstyle was not a form of race discrimination.[13]

In its decision, the Eleventh Circuit reasoned that the dreadlock hairstyle was a mutable characteristic that, although associable with race, involved a personal decision on behalf of the individual. Unlike race, the potential employee decided to have a particular hairstyle and also could alter the hairstyle to obtain employment.[14]

When distinguishing the concepts of hairstyle and race, the court stated:

> "We recognize that the distinction between immutable and mutable characteristics of race can sometimes be a fine (and difficult) one, but it is a line that courts have drawn. So, for example, discrimination on the basis of black hair texture (an immutable characteristic) is prohibited by Title VII, while adverse action on the basis of black hairstyle (a mutable choice) is not. Compare, e.g., Jenkins v. Blue Cross Mut. Hosp. Ins., Inc., 538 F.2d 164, 168 (7th Cir. 1976) (en banc) (recognizing a claim for racial discrimination based on the plaintiff's allegation that she was denied a promotion because she wore her hair in a natural Afro), with, e.g., Rogers v. Am. Airlines, Inc., 527 F.Supp. 229, 232 (S.D.N.Y. 1981) (holding that a grooming policy prohibiting an all-braided hairstyle did not constitute racial discrimination, and distinguishing policies that prohibit Afros, because braids are not an immutable characteristic but rather "the product of ... artifice")"[15]

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[7] *See* Willingham v. Macon Tel. Publ'g Co., 507 F.2d 1084 (5th Cir. 1975)
[8] *Id.*
[9] *See* Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980) (Upholding an employer's right to require employees to speak English while on the job.)
[10] Dreadlocks or locks are a hairstyle created when hair strands attach or lock onto one another, forming bunched strands. They are also known as "locs," or simply "dreads," though the latter two terms have disturbing historical derivations and are therefore sometimes considered offensive. Locks can occur naturally, or can be induced through manipulation, depending on the individual's hair. *See* California Senate Judiciary Committee Analysis: Senate Bill 188, 2019-2020 Regular Session at page 3, *available at:* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB188 (last visited Jan. 15, 2020).
[11] EEOC v. Catastrophe Management Solution, 852 F.3d at 1033 ("Ms. Jones told CMS that she would not cut her dreadlocks in order to secure a job, and we respect that intensely personal decision and all it entails. But, for the reasons we have set out, the EEOC's original and proposed amended complaint did not state a plausible claim that CMS intentionally discriminated against Ms. Jones because of her race.")
[12] *Id.* at 1020
[13] *Id.*
[14] *Id.*
[15] *Id.* at 1030

Through analyzing the difference between hair texture and hairstyles, the Eleventh Circuit makes it clear that the natural state of hair is an immutable characteristic protected by Title VII, but once an individual decides to style his or her hair in a particular way, employers are allowed the right to be critical of that decision without the presumption of a discriminatory intent.

Although the U.S. Supreme Court has not directly ruled on the issue of hairstyle under Title VII, the Court has ruled that a county's hair grooming regulations for the male members of its police force were constitutional and valid under the Civil Rights Act of 1871.[16]

The reluctance of the U.S. Supreme Court to hear Title VII hairstyle cases may be due to the settled judicial distinction between immutable and mutable characteristics or may be due to the view that the issue of ethnic hairstyles should be resolved through the legislative process.[17] In EEOC v. Catastrophe Management Solutions, the Eleventh Circuit suggested that "given the role and complexity of race in our society, and the many different voices in the discussion, it may not be a bad idea to try to resolve through the democratic process what "race" means (or should mean) in Title VII."[18]

Florida Civil Rights Act

The 1992 Legislature enacted the Florida Civil Rights Act (FCRA) to protect persons from discrimination in education, employment, housing, and public accommodations. In addition to the classes of race, color, religion, sex, and national origin protected in Title VII of the federal Civil Rights Act, the FCRA includes age, handicap, and marital status as protected classes.[19] The Legislature added pregnancy as a protected status under the FCRA in 2015.[20]

Similar to Title VII, the FCRA specifically provides several actions that, if undertaken by an employer, are considered unlawful employment practices.[21] Courts interpreting the FCRA typically follow federal precedent because the FCRA is generally patterned after Title VII. Still, differences between state and federal law persist. As noted above, the FCRA includes age,

[16] *See* Kelley v. Johnson, 425 U.S. 238 (1976) Policeman brought suit under the Civil Rights Act of 1871 challenging validity of county's hair grooming regulation for the male members of its police force. The Supreme Court, Mr. Justice Rehnquist, held that the county's determination that a hair grooming regulation should be enacted was not so irrational that it could be branded "arbitrary" and therefore a deprivation of respondent's "liberty" interest in freedom to choose his own hair style; whether a state or local government choice to have its uniformed police exhibit a similarity of appearance reflects a desire to make police officers readily recognizable to the public or to foster the "esprit de corps" that similarity of garb and appearance may inculcate within the police force itself, that justification for a hair style regulation is sufficiently rational to defeat a claim based on the liberty guarantee of the Fourteenth Amendment.

[17] "What we take away from Willingham and Garcia is that, as a general matter, Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices. *See* Willingham, 507 F.2d at 1092; Garcia, 618 F.2d at 269. And although these two decisions have been criticized by some, *see*, e.g., Camille Gear Rich, Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII, 79 N.Y.U. L. Rev. 1134, 1213–21 (2004), we are not free, as a later panel, to discard the immutable/mutable distinction they set out. *See* Cohen v. Office Depot, Inc., 204 F.3d 1069, 1076 (11th Cir. 2000)" EEOC v. Catastrophe Management Solution, 852 F.3d at 1030

[18] *Id.* at 1033

[19] Section 760.10(1)(a), F.S.

[20] SB 982 (Ch. 2015-68, L.O.F.)

[21] Section 760.10(2) through (8), F.S.

handicap, and marital status as protected categories. Although Title VII does not include these statuses, other federal laws address age and disability, albeit in a different manner.[22]

Procedure for Filing Claims of Discrimination

A person who believes that he or she has been the target of unlawful discrimination may file a complaint with the Florida Commission on Human Rights (FCHR). The person must file the complaint within 365 days of the alleged violation.[23] After a person files a claim of discrimination with the FCHR, the FCHR investigates the complaint.[24] The FCHR then must make a reasonable cause determination within 180 days after the filing of the complaint.[25] If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.[26] A plaintiff is required to file a state claim in a civil court under the Florida Civil Rights Act within 1 year of the determination of reasonable cause by the FCHR.[27]

If the FCHR returns a finding of no reasonable cause, the complainant may request an administrative hearing with the Division of Administrative Hearings (DOAH) within 35 days of the finding.[28] DOAH will issue a recommended order, which the FCHR may reject, adopt, or modify by issuing a final order.[29]

Remedies

Administrative Remedies If the Commission Pursues Administrative Action

Affirmative relief includes the prohibition of the discriminatory practice and back pay. The FCHR may also award reasonable attorney's fees to the prevailing party.[30]

Civil Remedies If the Person Pursues a Legal Action

State law authorizes awards of back pay, compensatory damages, and punitive damages.[31] Compensatory damages include damages for mental anguish, loss of dignity, and any other intangible injuries.[32] Punitive damages are capped at $100,000 regardless of the size of the employer.[33] The state and its agencies and subdivisions of the state are not liable for punitive damages[34] or recovery amounts more than the limited waiver of sovereign immunity.[35]

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[22] Kendra D. Presswood, *Interpreting the Florida Civil Rights Act of 1992*, 87 FLA. B.J. 36, 36 (Dec. 2013)
[23] Section 760.11(1), F.S.
[24] Section 760.11(3), F.S.
[25] Section 760.11(3), F.S.
[26] Section 760.11(4), F.S.
[27] Section 760.11(5), F.S.
[28] Section 760.11(7), F.S.
[29] *Id*.
[30] Section 760.11(6), F.S.
[31] Section 760.11(5), F.S
[32] *Id*.
[33] *Id*.
[34] Section 760.11(5), F.S.
[35] *Id*. Section 768.28(5), F.S., provides that damages against a state, its agencies, or subdivisions are capped at $200,000 per claim or $300,000 per incident. A plaintiff may pursue a claim bill to recover in excess of these caps, but claim bills are subject to the prerogative of the Legislature.

Florida Fair Housing Act

The Florida Fair Housing Act (FFHA),[36] modeled after the Federal Fair Housing Act, prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.[37] Also, the FFHA affords protection to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or to persons who are handicapped or associated with a disabled person.[38]

Courts interpreting the FFHA also follow federal precedent because the FFHA similarly covers the topics of Title VII.

Procedure for Filing Claims of Housing Discrimination

A person who believes that he or she has been the target of unlawful housing discrimination may file a complaint with the Florida Commission on Human Rights (FCHR). Under the FFHA, the FCHR has the authority to investigate housing complaints and issue necessary subpoenas to the parties involved.[39] The FCHR may choose to resolve a housing complaint and try to eliminate or correct the alleged discriminatory housing practice on behalf of an aggrieved party.[40] The FCHR may find reasonable cause for the plaintiff to bring either a civil action or an administrative hearing.[41] The FCHR is also allowed to institute a civil action if a respondent doesn't voluntarily alter discriminatory housing practices.[42]

Remedies for Housing Discrimination

<u>FCHR Civil Fines for Housing Discrimination</u>

If the FCHR initiates a civil action under s. 760.34(7), F.S., a court may find discriminatory housing practices and fine the respondent:

- Up to $10,000, if the respondent has not previously been found guilty of a violation;
- Up to $25,000, if the respondent has been found guilty of one prior violation; and
- Up to $50,000, if the respondent has been found guilty of two or more violations.

<u>Civil and Administrative Remedies If the Person Pursues a Legal Action</u>

Courts may provide civil complainants affirmative relief from the effects of the discriminatory housing practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney's fees and costs.[43] State law also allows aggrieved persons to request administrative relief under chapter 120, F.S. within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34, F.S.[44]

[36] Part II of ch. 760, F.S.
[37] Section 760.23(1), F.S.
[38] Sections 760.23(6)-(9), F.S.
[39] Section 760.32, F.S.
[40] Section 760.34(1), F.S.
[41] Section 760.34, F.S.
[42] *Id.* at (7)(a)
[43] Section 760.35, F.S.
[44] Section 760.11(5), F.S

Florida Housing Finance Corporation – Prohibited Discrimination

The Florida Housing Finance Corporation (FHFC) [45] is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.[46] The FHFC administers several multifamily and single-family housing programs, such as the State Apartment Incentive Loan Program (SAIL), the State Housing Initiatives Partnership Program (SHIP), the Affordable Housing Catalyst Program, and the First Time Homebuyer Program, that assist Floridians in obtaining safe, decent, affordable housing.

The SAIL program provides gap financing to developers through non-amortizing, low-interest loans to leverage mortgage revenue bonds or federal Low Income Housing Tax Credit resources and obtain the full financing needed to construct affordable rental units for very low-income families. The SHIP program provides funds to all 67 counties and Florida's larger cities on a population-based formula to finance and preserve affordable housing for very low, low, and moderate-income families based on locally adopted housing plans. Florida law grants the FHFC specific powers necessary to carry out activities or implement programs to provide affordable housing.[47]

Under s. 420.516, F.S., it is unlawful for any sponsor[48] involved in an FHFC program to discriminate against any person or family because of race, color, sex, national origin, or marital status while FHFC financing or funding bonds are outstanding.[49]

Educational Equality

The Florida Educational Equity Act[50] (FEEA) governs students' and employees' civil rights in Florida's public educational systems. The FEEA mirrors civil rights protections under Title VI of the federal Civil Rights Act. The FEEA requires equal access for all people to the Florida K-20 public education system and prohibits discrimination against any student or employee in the system. The FEEA prohibits discrimination based on race, ethnicity, gender, national origin, disability, or marital status.[51]

Additionally, discrimination protections are also applied to extracurricular school programs and activities under s. 1002.20, F.S. This section provides that all K-20 education programs, activities, and opportunities offered by public educational institutions must be made available

[45] The Florida Housing Finance Corporation (FHFC) was created as a public corporation within the Department of Economic Opportunity (DEO). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DEO. Section 420.504, F.S.
[46] Section 420.502(7), F.S.
[47] *See* ss. 159.608 and 420.507, F.S.
[48] "Sponsor means any individual, association, corporation, joint venture, partnership, trust, local government, or other legal entity or any combination thereof which: (a) Has been approved by the corporation as qualified to own, construct, acquire, rehabilitate, reconstruct, operate, lease, manage, or maintain a project; and (b) Except for a local government, has agreed to subject itself to the regulatory powers of the corporation." Section 420.502(39), F.S.
[49] Section 420.516, F.S.
[50] Section 1000.05, F.S.
[51] Id.

without discrimination based on race, ethnicity, gender, national origin, disability, or marital status.[52]

Freedom of Speech and Expression in Public School

The First Amendment to the U.S. Constitution protects an individual's freedom of speech and expression from undue interference or restriction by the government or a state actor, such as a public school.[53] These rights are applied to the states through the Fourteenth Amendment.[54] In the public school setting, courts interpret constitutional freedoms to provide school students a right to express themselves through hairstyle as long as it does not objectively disrupt the academic atmosphere of the school.[55]

To preserve the structure and learning environment of a public school, school administrators may only restrict speech and expression that poses an objective disruption to other students or school activities.[56] Under Section 1983 of the Civil Rights Act of 1871, students may claim that a school's restriction on a hairstyle is a violation of their First and Fourteenth Amendment constitutional rights to freedom of speech and expression.[57]

When evaluating student First Amendment claims against public school officials, a court will consider the reasons why a school official suppresses a student's freedom of expression.[58] In some instances, a court will conclude that a school is justified in suppressing student expression because schools have a legitimate state interest in controlling student behavior to preserve a structured environment conducive to learning and good moral character.[59]

In other instances, the court may rule that a school's reasons for curtailing a student's freedom of expression do not justify the sacrifice of liberty. The Supreme Court has stated, "[i]n order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint [or expression]."[60]

Federal Jurisprudence for Hairstyle in Public Schools

The Eleventh Circuit has ruled that a public school acted unconstitutionally by requiring a student to cut his hair for being too long.[61] In the case, the school supported this requirement by claiming that the length of hair disrupted school activities because the student was the target of violence repeatedly due to his hair length.[62] The school's attempt to avoid violence by requiring

[53] *See* Tinker v. Des Moines Ind. Comm. Sch. Dist., 393 U.S. 503 (1969)
[53] *See* Tinker v. Des Moines Ind. Comm. Sch. Dist., 393 U.S. 503 (1969)
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *See* Holloman ex rel. Holloman v. Harland, 370 F.3d 1252 (11th Cir. 2004) at 1275, rejecting Ferrell v. Dallas Ind. Sch. Dist., 392 F.2d 697 (5th Cir. 1968)
[58] *Id.*
[59] *Id.*
[60] Tinker, 393 U.S. at 509
[61] *See* Holloman, 370 F.3d at 1275
[62] *Id.*

the student to cut his hair was deemed an impermissible reason for suppressing the student's freedom to express himself through hairstyle.[63]

The CROWN Act in California

California became the first state to enact discrimination protections for hairstyles in state civil rights law. The California CROWN[64] Act was passed unanimously by California's Assembly and Senate. The bill[65] was signed into law by Governor Newsom on July 3, 2019, and took effect on January 1, 2020.[66]

The California law prohibits employers and public schools from restricting certain hairstyles. No employer or public school may ban or restrict individuals from wearing their hair in styles historically associated with race, including, but not limited to, afros, braids, twists, cornrows, and dreadlocks. Restricting protected hairstyles explicitly or under generic terms is considered a prohibited form of discrimination under California's Civil Rights Act, and violators will be subject to civil liabilities.[67]

III. Effect of Proposed Changes:

CS/SB 566 is the "Creating a Respectful and Open World for Natural Hair Act," or "CROWN Act," and amends various provisions of the Florida Statutes to provide civil protections against discrimination based on any trait historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles in the areas of employment, housing, and education. The bill defines "protective hairstyle" as including, but not limited to, hairstyles such as braids, locks, or twists.

The bill's preamble includes a series of recitals that declare hairstyle restrictions, a rampant source of racial discrimination imposed by European culture. The preamble states that prohibitions against certain hairstyles have a disparate impact on black individuals and are more likely to burden or punish black employees and students.

Florida Civil Rights Act and Fair Housing Act

The bill amends the definitions in the Florida Civil Rights Act (FCRA) in s. 760.02, F.S., to define "race" as any trait historically associated with race, including but not limited to, hair texture, hair type, and protective hairstyles. The term "protective hairstyle" includes, but is not limited to, hairstyles such as braids, locks, or twists.

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[63] *Id.*
[64] "Creating a Respectful and Open World for Natural Hair Act" *See* California Senate Judiciary Committee Analysis: Senate Bill 188, 2019-2020 Regular Session
[65] California SB 188 (2019), *available at*: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB188 (last visited Jan. 15, 2020).
[66] Office of Governor Gavin Newsom, *Governor Newsom Signs Legislation to Protect Employees from Racial Discrimination Based on Hairstyle*, *available at*: https://www.gov.ca.gov/2019/07/03/governor-newsom-signs-legislation-to-protect-employees-from-racial-discrimination-based-on-hairstyle/ (last visited Dec. 30, 2019).
[67] *Id.*

Under the bill, discrimination based on traits historically associated with race, including protective hairstyles, is a prohibited form of race discrimination. The definition of "race" in the bill applies to the FCRA, the Florida Fair Housing Act, and s. 509.092, F.S., which prohibits public lodging and food service establishments from refusing to serve individuals based upon a protected status. Thus, based on a protected racial trait or protective hairstyle, a person may not be discriminated against:

- By public lodging and food service establishments;
- With respect to education, housing, or public accommodation;
- With respect to employment, provided that any discriminatory act constitutes an unlawful employment practice;[68] or
- With respect to the sale, rental, or financing of residential real estate.

The bill provides individuals the ability to seek administrative remedies, equitable relief, and damages for legal claims based on discrimination of a racial trait and protective hairstyle. The bill also directs the Florida Commission on Human Relations to receive, initiate, investigate, conciliate, hear, and act upon complaints alleging discrimination of racial traits and protective hairstyles.

Florida Housing Finance Corporation

The bill amends s. 420.516, F.S, to specify that it is unlawful for any sponsor[69] involved a Florida Housing Finance Corporation program to discriminate against any individual based on race, as defined in s. 760.02, F.S., while bonds are outstanding for funding or financing the sponsor's project.

Public K-20 Education System

The bill amends s. 1000.21, F.S., to define "race" and "protective hairstyle" as used in the Florida K-20 Education Code, making it unlawful for any Florida K-20 public education system to discriminate against a student or employee based a racial trait or protective hairstyle. This protection extends to education programs, activities, and opportunities offered by the Florida K-20 public education system.

The bill reenacts s. 420.5087(6)(i), F.S., to incorporate the amendments made by the bill.

The bill will take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[68] Unlawful employment practices include discharging or failing to or refusing to hire a person, or discriminating in compensation, benefits, terms, conditions, or privileges of employment; and limiting or classifying an employee or applicant in such a way as to deprive the person of employment opportunities The prohibition on unlawful employment practices applies also to employment agencies and labor organizations. *See* s. 760.10, F.S.

[69] See Section 420.503(39), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill potentially violates the Equal Protection Clause of the United States Constitution.[70] The Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."[71] As seemingly expressed in the recitals of the preamble, the bill's statutory definition of "race" and "protective hairstyle" may run afoul of the Equal Protection Clause by providing discrimination protections to individuals unequally, and based on racial classifications.[72,73] For example, the bill, in theory, may provide discrimination protections for a mohawk-like hairstyle if worn by an American Indian from the Pawnee Nation of Oklahoma[74] but may deny similar protections to other racial groups that lack a historical association with the hairstyle. Notwithstanding, courts are obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever reasonably possible.[75]

[70] U.S. Constitution amend. XIV, s. 1.
[71] *Id.*; *See also* Romer v. Evans, 517 U.S. 620, 623, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996) (Under the Equal Protection clause, persons who are similarly situated may not be classified and treated differently because "the Constitution 'neither knows nor tolerates classes among citizens.'")
[72] *See* Regents of the University of California v. Bakke, 438 U.S. 265, 98 S.Ct. 2733 (1978) at 307 ("Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." (Justice Powell)). *See also* Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S.Ct 2097, 132 L.Ed.2d 158 (1995) at 237 ("To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American." (Justice Scalia))
[73] "[A]ll racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized." Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 224, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995). This " 'standard of review ... is not dependent on the race of those burdened or benefited by a particular classification.' " *Ibid.* (quoting Richmond v. J.A. Croson Co., 488 U.S. 469, 494, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality opinion)).
[74] *See* Wikipedia, *Mohawk hairstyle*, *available at:* https://en.wikipedia.org/wiki/Mohawk_hairstyle (last visited Jan. 15, 2020); *See also* Pawnee Nation of Oklahoma, *Pawnee History*, *available at:* https://www.pawneenation.org/page/home/pawnee-history (last visited Jan. 15, 2020) ("Pawnees dressed similar to other plains tribes; however, the Pawnees had a special way of preparing the scalp lock by dressing it with buffalo fat until it stood erect and curved backward like a horn.")
[75] *See* Franklin v. State, 887 So.2d 1063, 1080 (Fla.2004); *See also* Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc., 978 So.2d 134, 139 (Fla.2008); *See also* Fla. Dep't of Revenue v. Howard, 916 So.2d 640, 642 (Fla.2005).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may produce an indeterminate negative fiscal impact on private sector businesses. Businesses may face an increase in litigation expenses to defend discrimination claims, monies paid to settle discrimination claims, and civil damages (including punitive damages)[76] owed for meritorious discrimination claims. General business liability insurance policies may not cover these increased costs and liabilities. Businesses and insurance companies may sustain nominal costs in updating insurance policies for employment practices liability coverage to incorporate racial trait and hairstyle discrimination. Businesses may also incur nominal expenses in updating employee grooming and other policies.

Private sector housing companies affected by the bill may sustain similar indeterminate negative fiscal impacts.

This bill may produce an indeterminate positive fiscal impact for individuals that are able to reduce costs associated with hair-care and grooming.[77] However, individuals that are more likely to wear protected hairstyles may see a reduction of their statistical representation in the permanent workforce.[78]

C. Government Sector Impact:

This bill may produce an indeterminate negative fiscal impact for Florida K-20 public education institutions. Florida K-20 public education institutions may face increases in litigation expenses and civil liabilities for racial trait and hairstyle discrimination claims from both students and employees.

The Florida Commission on Human Relations (FCHR) estimates that the bill may require the addition of three full-time employees, consisting of a Specialist II, a Regulatory Specialist, and a Senior Attorney.[79]

VI. Technical Deficiencies:

None.

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[76] Section 760.07, F.S.
[77] *See* California Senate Judiciary Committee Analysis SB 188, 2019-2020 Regular Session at page 6, *available at:* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB188 (last visited Jan. 15, 2020).
[78] Increasing the costs associated with firing an employee, also increases the "selectivity" of employers, which statistically results in a reduction of minority representation in the workplace. *See* Morgan, John and Vardy, Felix, *Diversity in the Workplace*, International Monetary Fund Working Paper, JEL Classification Numbers: D21, D63, D83, J71, J78. (2006)
[79] Per e-mail correspondence with the Florida Commission on Human Relation dated Jan. 10, 2020 (on file with the Senate Committee on Community Affairs).

VII. Related Issues:

The bill may create a much broader right for discrimination protections than contemplated by the bill's preamble. The bill does not define "traits" or "historically associated." These omissions may cause ambiguity in what characteristics of a person are protected from discrimination.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 420.516, 760.02, 1000.21, and 420.5087.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 13, 2020:
The committee substitute amends the definition of "race" to include traits historically associated with race, including "protective hairstyles." This change makes discrimination of a racial trait or protective hairstyle a form of discrimination based on race, as opposed to establishing a new protected status or class. Additionally, the CS uses the term "protective hairstyle" instead of "protected hairstyle."

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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The Committee on Community Affairs (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete lines 72 - 419

and insert:

discriminate against any person or family because of race as defined in s. 760.02, color, religion, sex, national origin, or marital status.

Section 3. Section 760.02, Florida Statutes, is reordered and amended to read:

760.02 Definitions.—For the purposes of ss. 760.01-760.11,

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760.23, 760.25, and 509.092, the term:

(7)~~(1)~~ "Florida Civil Rights Act of 1992" means ss. 760.01-760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

(9)~~(5)~~ "National origin" includes ancestry.

(10)~~(6)~~ "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(5)~~(7)~~ "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(6)~~(8)~~ "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(11) "Protective hairstyle" includes, but is not limited to, hairstyles such as braids, locks, or twists.

(8)~~(9)~~ "Labor organization" means any organization that ~~which~~ exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances,

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terms or conditions of employment, or other mutual aid or protection in connection with employment.

(1) ~~(10)~~ "Aggrieved person" means any person who files a complaint with the Florida Commission on Human Relations ~~Commission~~.

(13) "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles.

(12) ~~(11)~~ "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment that ~~which~~ provides lodging to transient guests, other than an establishment located within a building that ~~which~~ contains not more than four rooms for rent or hire and that ~~which~~ is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

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(d) Any establishment that ~~which~~ is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and that ~~which~~ holds itself out as serving patrons of such covered establishment.

Section 4. Subsections (9) and (10) are added to section 1000.21, Florida Statutes, to read:

1000.21 Systemwide definitions.—As used in the Florida K-20 Education Code:

(9) "Protective hairstyle" includes, but is not limited to, hairstyles such as braids, locks, or twists.

(10) "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 6 - 31

and insert:

discriminate against any person or family because of traits historically associated with race; reordering and amending s. 760.02, F.S.; defining the terms "protective hairstyle" and "race"; amending s. 1000.21, F.S.; defining the terms "protective hairstyle" and "race";

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

SB 566
Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-20
Meeting Date

564
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Discrimination

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Job Title Ms

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Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/CS/SB 580
INTRODUCER:	Community Affairs Committee, Judiciary Committee, and Senator Bracy
SUBJECT:	Uniform Partition of Heirs Property Act
DATE:	January 14, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Elsesser	Cibula	JU	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 580 adopts the Uniform Partition of Heirs Property Act by the Uniform Law Commission. The bill provides special procedures for the partition of "heirs property," which generally includes inherited real property owned by relatives as tenants in common. A partition involves a legal action by a cotenant to force the sale or division of real property.

The bill essentially provides a right of first refusal, allowing heirs property cotenants to purchase the property interests of cotenants seeking partition before the property is divided or sold. The bill requires a court to determine the fair market value of the property, either through court-ordered appraisal or based on the agreement of the parties before the court proceeds to partition. The bill generally requires partitions by sale to be made in an open-market sale by a court-appointed real estate broker, instead of an auction as the statutes currently require.

II. Present Situation:

In Florida, when a person dies intestate, i.e., without a will, and the decedent has no surviving spouse, the decedent's real property is distributed per stripes to heirs in the following order: to the decedent's descendants (typically children or grandchildren); if no descendants, then to the decedent's parents; if no surviving parents, then to any siblings.[1] When multiple people receive property in this manner, they own the property as tenants in common.[2] "[T]he distinguishing

[1] Sections 732.102-104, F.S.

[2] *See* s. 689.15, F.S. (stating that transfers of property create tenancies in common absent an instrument stating otherwise).

feature of a tenancy in common is unity of possession,"[3] and as such, "[t]enants in common each own a proportional undivided interest in the property rather than the whole."[4]

Tenants in common do not have a right to survivorship, i.e., when a tenant in common dies, his or her property interest does not transfer to the other tenants in common but rather transfers to the deceased tenants' heirs (by will or through intestate succession).[5] Therefore, as heirs beget heirs, the number of tenants in common can increase.[6]

The interests of the decedent's property can be spread further, as a tenant in common "may freely transfer or encumber his or her undivided [...] interest without transferring or encumbering the undivided one-half interest owned by the other."[7] A tenant in common's interest "is like any other asset that a person owns as far as the person's creditors is concerned," i.e., a "creditor may levy and execute on the interest. Similarly, a judgment lien will attach to the undivided interest of one tenant in common without attaching to the undivided interest of the other tenant in common."[8] Additionally, a developer may acquire properties owing back taxes through tax deed sales.[9]

A single heir can sell his or her fractional interest or lose it to a creditor; the purchaser or creditor then becomes a tenant in common and can petition the court for a partition sale to receive their fractional interest: "As a general rule tenants in common are entitled to partition as a matter of right."[10]

A cotenant seeking partition of property must, in a complaint, describe the property to be partitioned and name all interested parties "to the best knowledge and belief of [the] plaintiff."[11] If the names of any interested parties are unknown, "the action may proceed as though such unknown persons were named in the complaint."[12]

A court may order partition "if it appears that the parties are entitled to it."[13] If the court determines a plaintiff's interest in the property, it can order a partition of that interest, "leaving for future adjustment in the same action the interest of any other defendants" whose interests were not determined in the legal action.[14]

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[3] *In re Estate of Cleeves*, 509 So. 2d 1256, 1259 (Fla. 2d DCA 1987).
[4] *In re Willoughby*, 212 B.R. 1011, 1015 (Bankr. M.D. Fla. 1997).
[5] *See, e.g., In re Suggs Estate*, 405 So. 2d 1360, 1361 (Fla. 5th DCA 1981).
[6] *See* The Florida Bar Journal, *The Disproportionate Impact of Heirs Property in Florida's Low Income Communities of Color* (available at https://www.floridabar.org/the-florida-bar-journal/the-disproportionate-impact-of-heirs-property-in-floridas-low-income-communities-of-color/, last visited December 12, 2019).
[7] *Willoughby*, 212 B.R. 1011, 1015.
[8] *Id*. at 1015-16.
[9] Sections 197.502 and 197.542, F.S.
[10] *Condrey v. Condrey*, 92 So. 2d 423, 427 (Fla. 1957); Section 64.031, F.S. However, the right of a tenant in common to partition of realty may be waived by the tenant in common, or he may be estopped to enforce the right by agreement not to partition, either express or implied. *Id*.
[11] Section 64.041, F.S.
[12] *Id*.
[13] Section 64.051, F.S.
[14] *Id*.

If the court orders partition, it must appoint three commissioners to make the partition.[15] If the commissioners determine that the property is indivisible and cannot be divided without prejudice to one or more of the owners, and the court "is satisfied" that the determination is correct, "the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest."[16] Every party is required to pay the costs of the process, including attorneys' fees, proportionate to each party's interest in the property.[17] The court may order these costs and fees be paid out of the proceeds of the property sale.[18]

III. Effect of Proposed Changes:

This bill provides procedures for the partition of "heirs property." Heirs property is real property held by tenants in common where there is no existing agreement governing the partition of the property, one or more of the cotenants acquired his or her property interest from a relative, and either (1) twenty percent of the property is owned by cotenants who are relatives (or twenty percent of the owners are relatives) or (2) twenty percent of the property is owned by cotenants who received their interests from a relative.

Under the bill, if a cotenant seeks partition of property, the court must determine whether the property is heirs property. If the court determines the property is heirs property, and the plaintiff seeks to provide notice by publication, the plaintiff must post a notice of action issued under s. 49.08, F.S., on the property. This notice contains the names of known defendants to the action, a description of unknown defendants claiming any interest in the action, the nature of the action, the name of the court in which the action was brought, and a description of the property.

If the court determines that the property is heirs property, it shall order an appraisal of the property, unless the cotenants have agreed to the property's value or the court determines that the cost of an appraisal would outweigh the appraisal's "evidentiary value."

If the court orders an appraisal, it must appoint a disinterested licensed appraiser to determine the property's fair market value and file a sworn or verified appraisal with the court. In addition to the appraisal, the court must consider "equitable accounting," i.e., contributions to the property made by individual cotenants, including property taxes. The court must adjust the purchase cotenants' purchase prices based on this accounting. After the appraisal is filed, the court must notify all known parties as to the property's value and inform the parties that the appraisal is available for review and that each party may object to the appraisal within 30 days after the notice.

If an appraisal is filed, the court must conduct a hearing to determine the value of the property not sooner than 30 days after the notice has been sent to the interested parties. The court must

[15] Section 64.061, F.S.
[16] Section 64.071, F.S.
[17] Section 64.081, F.S.
[18] *Id*.

determine the value of the property before proceeding to the partition action. The court must give notice to the parties of the market value.[19]

If any cotenant requested partition by sale, the bill essentially grants a right of first refusal to the other cotenants, requiring that the court notice any other cotenants who did not request the sale, informing them that they may buy all of the interest of the cotenant who requested the sale. The value of each tenant's interest is proportional to his or her fractional interest in the property. Within 45 days after the notice of the requested partition by sale, the other cotenants may give notice that they elect to purchase the interest of the cotenant seeking the sale. The court shall notify the parties if only one other cotenant gives notice that he or she wishes to purchase the interest of the party seeking a sale. If multiple cotenants give notice that they wish to purchase the interest of the party seeking partition by sale, the court must allocate the right to purchase that interest proportional to each cotenant's existing fractional ownership of the property. If one or more cotenants give notice of their desire to purchase the interest of a party seeking partition by sale, the court must set a payment due date at least 60 days after the date that the court gave notice of the desire to purchase.

The court must reallocate the property interests if the parties pay their apportioned price within the time limit set by the court; if one or more of the parties do not pay within that timeframe, the court must notify the other cotenants of the price of the remaining interests not purchased, and those other cotenants have 20 days to purchase the remaining interest. If none of the parties pay within the timeframe set by the court, the court must proceed with the partition action as if none of the interests were purchased.

Within 45 days after the initial complaint requesting partition by sale, any cotenant entitled to purchase an interest may request that the court authorize the sale of the interests of any defendants named in the complaint who did not file an appearance to the action. The court may grant the request if the court has determined the fair market value of the non-appearing party's interest under the procedures outlined by the bill.

If the interests of the cotenants who requested partition are not purchased or if there remain one or more parties who request partition in kind after the buyout outlined in the bill, the court must order a partition in kind unless the commissioners described in s. 64.061, F.S., find that a partition in kind will result in manifest injustice, considering a list of factors including whether physical division is practicable, whether the division would result in inequitably valued parcels, a party's sentimental attachment to the property, the degree to which parties have contributed their pro-rated share of property taxes, and any other relevant factors. If the court does not order partition in kind, it may order a partition by sale or dismiss the partition action.

A court ordering partition must enter a judgment of partition to be recorded in the official records of the county where the property is located. This judgment of partition must include a legal description of the property before partition, a description of each parcel of partitioned property, and the names of the owners of each parcel. The court clerk must record the judgment.

[19] The bill does not set a timeline for the notice of the fair market value determination as it does for the notice of appraised value.

If the court orders a sale of a property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or auction would be in the best interests of the tenants. The court must appoint a licensed real estate broker within 10 days to sell the property in a commercially reasonable manner. For an open-market sale, the broker must report an offer at the court-determined property value within 7 days after receiving the offer.

The bill also provides that cotenants owning real property that does not meet the definition of "heirs property" may agree to partition their property under the procedures described in the bill, jointly notifying the court of such agreement.

The bill adds a requirement for commissioners appointed under s. 64.061, F.S., requiring that they be "disinterested and impartial and not a party or a participant in the action."

The bill does not contain an attorney fee provision, so parties are still responsible for their costs and fees proportional to their interest in the property, per s. 64.081, F.S.

Under the federal Agricultural Improvement Act of 2018, entities in states having adopted the Uniform Partition of Heirs Property Act are given preference in receiving loans from the U.S. Secretary of Agriculture to assist in the resolution of interests on farmland with multiple owners.[20] Additionally, farm operators in states having adopted the Uniform Partition of Heirs Property Act are eligible to receive a "farm number," a prerequisite to participate in certain programs provided by the Secretary of Agriculture under the Agricultural Improvement Act.[21]

The bill takes effect on July 1, 2020, and applies prospectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[20] Agricultural Improvement Act, Pub. Law 115-334, 132 Stat. 4670.
[21] *Id.* at 5015.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires a court to determine the market value of heirs property before commencing partition proceedings and requires partition by sale to be conducted on the open market by a licensed real estate broker, rather than at auction (unless a court determines that auction or sealed bids would be more economically advantageous). This change in the procedure may affect the sale price of heirs property partitioned by sale.

C. Government Sector Impact:

The new procedures for the partition of heirs property appear likely to result in a slight increase in judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 64.201, 64.202, 64.203, 64.204, 64.205, 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213, and 64.214.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on January 13, 2020:
The committee substitute incorporates technical, clarifying changes into the bill.

CS by Judiciary on December 10, 2019:
The committee substitute made the following changes to the underlying bill:

- Provides that cotenants owning real property that does not meet the definition of "heirs property" may agree to partition their property under the procedures described in the bill, jointly notifying the court of the agreement.
- Revises procedures for providing notice by publication.
- Requires a court to consider "equitable accounting," including contributions to the property made by cotenants, in determining the fair purchase price for each cotenant.

- Requires a court ordering partition to enter a "judgment of partition," which must be recorded in the official records of the county.
- Provides that the commissioners described s. 64.061, F.S., and not the court, make the determination as to whether partition in kind would prejudice any of the cotenants.
- Clarifies that the bill establishes a preference for partitions in kind over partition sales.

B. Amendments:

None.

917052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
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The Committee on Community Affairs (Bracy) recommended the following:

Senate Amendment

Delete line 65
and insert:
and adjustments of accounts between cotenants, which are related

 246766

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
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The Committee on Community Affairs (Bracy) recommended the following:

Senate Amendment

Delete line 110
and insert:
publication, and the court determines that the property is heirs property, then the court shall order the clerk of the court to

744604

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
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The Committee on Community Affairs (Bracy) recommended the following:

Senate Amendment

Delete line 288
and insert:
recorded by the clerk of the court in the official records of the county where the property is located.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

580
Bill Number (if applicable)

Topic UNIFORMED PARTITION OF HEIRS

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

SB 580
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Heirs Property Rights

Name Lindsay Cross

Job Title Govt Relations Director

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Street

Phone 727-642-7563

Tally FL 32303
City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

590
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Hemp Property

Name David Cullen

Job Title

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Tal
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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

SB 580
Bill Number (if applicable)

Topic Uniform Partition of Heirs Property Act

Amendment Barcode (if applicable)

Name Travis Moore

Job Title

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Street

Phone 727.421.6902

St. Petersburg FL 33731
City *State* *Zip*

Email travis@moore-relations.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Defenders of Wildlife

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

580
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Uniform Partion of Heirs Property

Name Scott McCoy

Job Title

Address P.O. Box 10788
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Tallahassee FL 32302
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Phone 334-224-4309

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/2020
Meeting Date

580
Bill Number (if applicable)

Topic Uniform Partition of Heirs Property

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

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Tallahassee, FL 32301
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Phone 850-321-9386

Email fcfep@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 630
INTRODUCER:	Senator Mayfield
SUBJECT:	Regulation of Smoking
DATE:	January 9, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.			IT	
3.			RC	

I. Summary:

SB 630 amends the "Florida Clean Indoor Air Act" in part II of ch. 386, F.S., which regulates tobacco smoking in Florida, to allow counties and municipalities to restrict smoking within the boundaries of any park they own. Currently, the state preempts the regulation of smoking under s. 386.209, F.S., and does not provide counties and municipalities the authority to regulate smoking. "Smoking" is defined in ch. 386, F.S., as "inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product."

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.[1]

Florida Constitution

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an "enclosed indoor workplace," in part, as "any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers … without regard to whether work is occurring at any given time." The amendment defines "work" as "any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time,

[1] Section 386.202, F.S.

whether legally or not." The amendment provides limited exceptions for private residences "whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof," retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations; provided for administrative enforcement, and required and authorized agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., which amended part. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;[2] stand-alone bars;[3] designated smoking rooms in hotels and other public lodging establishments;[4] and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.[5]

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.[6] The penalty for a first violation is a fine of not less than $250 and not more than $750. The act provides fines for subsequent violations in the amount of not less than $500 and not more than $2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than $100 for a first violation and not more than $500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

[2] Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.
[3] Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.
[4] Section 386.2045(3), F.S. *See also* definition of the term "designated guest smoking room" in s. 386.203(4), F.S.
[5] Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.
[6] The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[7]

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.[8]

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state's preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.[9] The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,[10] authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

Public Parks Owned by Counties and Municipalities

In Florida, there are 67 separate county park systems and more than 400 separate municipal park systems.[9] For example, Orange County Florida maintains and operates 118 county-owned parks,

[7] Section 386.212(3), F.S.
[8] Section 386.212(4), F.S.
[9] Op. Att'y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att'y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.
[10] Chapter 2011-108, L.O.F.
[9] Florida Division of Recreation and Parks, *Frequently Asked Questions*, *available at:* http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf (last visited Nov. 7, 2019).

which consist of a wide array of available activities and facilities.[10] Some activities these parks provide the public include nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.[11]Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the city of Winter Park, within Orange County, owns and operates 11 city parks, which offer similar recreational activities.[12]

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, the majority of which are county and municipal parks.[13]

Laws in Other States

In 2009, Maine passed a law prohibiting "[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site."[14] In 2015, Hawaii passed a law prohibiting smoking within its state park system.[15] In 2018, New Jersey banned smoking at public parks and beaches.[16] New Jersey's legislature found that "[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]"[17]

Alaska law prohibits individuals from smoking outdoors "within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are

[10] Orange County Government Florida, *Parks, available at:* http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk (last visited Nov. 13, 2019).
[11] *Id.*
[12]City of Winter Park, *Parks, available at:* https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/ (last visited Nov. 13, 2019).
[13] Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory, available at:* https://floridadep.gov/parks/florida-outdoor-recreation-inventory (last visited Nov. 13, 2019).
[14] Me. Rev. Stat. tit. 22, §§ 1580-E(2) and 1541(6). Under Maine law, "'Smoking' includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. 'Smoking' includes the use of an electronic smoking device."
[15] Haw. Rev. Stat. Ann. § 184-4.5. "Smoking" is defined in the statute as "inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device."
[16] 2018 NJ Sess. Law Serv. Ch. 64, S. 2534 (2018), *available at:* https://www.njleg.state.nj.us/2018/Bills/PL18/64_.PDF (last visited Nov. 13, 2019). The law defines "smoking" as "the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device."
[17] N.J. Stat. Ann. § 26:3D-56(e).

present."[18] Puerto Rico prohibits smoking in "public or private recreational installations."[19] The definition of public or private recreational installations under Puerto Rico law includes parks.[20] Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.[21]

Oregon's Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.[22] Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.[23]

Health and Environmental Concerns

In 2018, an estimated 16 percent of the adults in Florida were tobacco smokers.[24] Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.[25] Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.[26] Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.[27] Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.[28]

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[18] Alaska Stat. Ann. §§ 18.35.301(c)(1) and 18.35.399(12). Alaska law defines "smoking" as "using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation."

[19] 24 L.P.R.A. §§ 891 and 892. "Smoking" is defined as "the activity of inhaling and exhaling smoke from [tobacco] and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes, and smoking articles while lit and it shall also include the use of the so-called electronic cigarette."

[20] 24 L.P.R.A. § 891.

[21] Okla. Stat. Ann. tit. 21, § 1247(B).

[22] Or. Admin. R. 736-010-0040(8)(j).

[23] American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), *available at:* https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf (last visited Nov. 13, 2019). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

[24] United Health Foundation, America's Health Rankings, *Annual Report*, *available at:* https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL (last visited Nov. 13, 2019).

[25] Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, *available at:* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Nov. 13, 2019).

[26] *Id*.; U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 148 (2014), *available at:* https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf (last visited Nov. 13, 2019).

[27] U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 7 (2014); Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, *available at:* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Nov. 13, 2019).

[28] Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. PUBLIC HEALTH 3, 527–532 (2017), *available at:* https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639 (last visited Nov. 13, 2019); James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios and in Motor Vehicles*, 34 WM MITCHELL L. REV. 1621, 1622–1624 (2008), *available at:* https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-symposium-repace.pdf (last visited Nov. 13, 2019).

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.[29] It is estimated that of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.[30] Furthermore, cigarette butts contain hazardous substances, and studies have shown these are potentially toxic to animals.[31]

Under Florida law, it is illegal to discard any tobacco product as litter.[32] Discarding a cigarette butt would constitute a noncriminal infraction, punishable by a penalty of $100 in addition to any court-ordered litter pickup or other commensurate labor.[33] However, barriers such as resource constraints or lack of cooperation can lead to the inadequate enforcement of litter-related laws.[34]

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.[35] Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.[36] In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.[37] Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the United States Forest Service shows that a significant number of wildfires were started by "smoking" between 1992 and 2015.[38] The Florida Forest Service is reporting an increased risk of wildfires for areas of northwestern Florida in the aftermath of Hurricane Michael, due to factors such as increased fuel loadings and reduced access for fire mitigation equipment.[39]

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[29] NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter? available at:* https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html (last visited Nov. 13, 2019); Bonanomi, Giuliano et al., *Cigarette Butt Decomposition and Associated Chemical Changes Assessed by 13C CPMAS NMR*, 10 PLOS ONE 1 e0117393, 2 (2015), *available at:* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4307979/pdf/pone.0117393.pdf (last visited Nov. 13, 2019).

[30] World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) *available at:* https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1 (last visited Nov. 13, 2019); Thomas E. Novotny and Elli Slaughter, *Tobacco Product Waste: An Environmental Approach to Reduce Tobacco Waste*, 1 CURR. ENVIRON. HEALTH REP. 3: 208–216, 208 (2014), *available at:* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4129234/ (last visited Nov. 13, 2019).

[31] Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 ECOTOXICOLOGY AND ENVIRON. SAFETY 362-368, 362–363, 367 (2015), *available at:* http://tweb.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf (last visited Nov. 13, 2019); Stephanie L. Wright, *Bioaccumulation and Biological Effects of Cigarette Litter in Marine Worms*, 2015 SCI. REP. 5: 14119, 1 (2015), *available at:* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4569891/ (last visited Nov. 13, 2019).

[32] Section 403.413(2)(d) and (f), (4), F.S.

[33] Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.

[34] Keep America Beautiful, *Enforcement and Prosecution Guide 2018*, 13–19 (2018), *available at:* https://www.kab.org/sites/default/files/Enforcement_and_Prosecution_Guide_Final.pdf (last visited Nov. 13, 2019).

[35] Section 633.142(2)(a), F.S.

[36] Section 633.142, F.S.

[37] Florida Department of Agriculture and Consumer Services, Wildland Fire, *Prevention*, *available at:* https://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Wildland-Fire (last visited Nov. 13, 2019).

[38] Karen C. Short, *Spatial Wildfire Occurrence Data For the United States, 1992-2015* (2017), *available at:* https://www.fs.usda.gov/rds/archive/Product/RDS-2013-0009.4/ (last visited Nov. 13, 2019). The data can be viewed by clicking on the file labeled "RDS-2013-0009.4_ACCDB.zip," and viewing the column labeled "STAT_CAUSE_DESCR."

[39] Jim Karels, Director, Florida Forest Service, Presentation to the Florida Senate Environment and Natural Resources Committee, January 8, 2019, *Hurricane Michael Impacts, Actions and Needs*, slides 14-16, 18 (2019).

III. Effect of Proposed Changes:

Section 1 amends s. 386.209, F.S., within part II of ch. 386, F.S. The bill allows municipalities and counties to further restrict smoking within the boundaries of any public park they own. Given the existing definition of "smoking" in ch. 386, F.S., the bill would allow municipalities and counties to further restrict the ability for any person to inhale, exhale, burn, carry, or possess any lighted tobacco product, including cigarettes, cigars, pipe tobacco, or any other lighted tobacco product, in a public county or municipal park.

Section 2 states that the act would take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Visitors to county or municipal parks who violate smoking restrictions imposed by a county or municipality may be subject to the applicable fines or civil penalty for such violations.

C. Government Sector Impact:

Counties and municipalities that opt to restrict smoking within the boundaries of public parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent any imposed smoking restrictions deter or encourage visitation of a county or municipal park, a county or municipality may experience fluctuation in revenues generated by a public park admittance fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no definition for "public park" in ch. 386, F.S., so it may not be clear exactly which areas are subject to the bill's optional prohibition on smoking.

Although this bill specifically deals with "smoking," counties and municipalities are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

The short title of part II of ch. 386, F.S., which is entitled the "Florida Clean Indoor Air Act," should be amended to remove the term "indoor" since the bill expands the scope of the act to regulate smoking beyond indoor areas, such as public parks.

VIII. Statutes Affected:

This bill substantially amends section 386.206 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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1/13/20
Meeting Date

630
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Regulation of Smoking

Name Christine Hunschofsky

Job Title Mayor

Address 6600 University Dr
Street

Parkland FL
City *State* *Zip*

Phone 954-757-4123

Email Chunschofsky@cityofparkland

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Parkland

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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JAN 13 2020
Meeting Date

10630
Bill Number (if applicable)

Topic Smoking in Parks

Amendment Barcode (if applicable)

Name Marc Ryan

Job Title City Manager

Address 2055 South Patrick Dr. Phone 321 773-3181
Street

Indian Harbour Beach FL 32937 Email mryan@indianharbour.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Indian Harbour Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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01/13/2020
Meeting Date

630
Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Kloee Ciuperger ("See-You-Per-Grr")

Job Title Legislative Coordinator

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Street

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Stuart FL 34987
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Martin County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

SB 630
Bill Number (if applicable)

Topic Smoking / Tobacco

Amendment Barcode (if applicable)

Name Mark Landreth

Job Title Govt Relations Director

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Tallahassee FL 32308
City *State* *Zip*

Phone 850.544.3376

Email Mark.Landreth@heart.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Heart Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

SB 630
Bill Number (if applicable)

Topic Tobacco/Smoking

Amendment Barcode (if applicable)

Name Heather Youmans

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Email Heather.Youmans@cancer.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.13.2020
Meeting Date

SB 630
Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Tonnette Graham

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

HB 630
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Regulation of Smoking

Name Laura Boehmer

Job Title Partner, The Southern Group

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City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sarasota County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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1/13/20
Meeting Date

HB 1030
Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Laura Boehmer

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Hernando County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-20
Meeting Date

SB 630
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 630: Regulation of Smoking

Name Brian Sullivan

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

630
Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name David Cullen

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 630
Bill Number (if applicable)

January 13, 2020
Meeting Date

Amendment Barcode (if applicable)

Topic Regulation of Smoking

Name Patricia Greene

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Lung Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

630
Bill Number (if applicable)

Topic SMOKING

Amendment Barcode (if applicable)

Name Casey Cook

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Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 998
INTRODUCER:	Community Affairs Committee and Senator Hutson
SUBJECT:	Housing
DATE:	January 14, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	**Fav/CS**
2.			IS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 998 addresses several housing issues related to development zoning and impact fees; the provision of affordable housing; and taxation, regulation, ownership, and tenancy related to mobile homes and mobile home parks.

With respect to zoning, impact fees, and affordable housing, the bill:

- Notwithstanding other laws and regulations, authorizes local governments to approve the development of affordable housing on any parcel zoned for residential, commercial or industrial use.
- Requires local governments to adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use.
- Requires the reporting of impact fee charges data within the annual financial audit report submitted to the Department of Financial Services.
- Requires the evaluation of additional local government contribution criteria within applications submitted for State Apartment Incentive Loan Program funding.
- Transitions the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by the Florida Housing Finance Corporation.
- Establishes biannual regional workshops for locally elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices.
- Adds data reporting within a State Housing Initiatives Partnership Program participant's submissions to Florida Housing on affordable housing applications approved and denied.

- Permits Florida Housing to withhold specified distributions from the Local Government Housing Trust Fund to fund the construction of transitional housing for persons aging out of foster care.

With respect to housing issues related to mobile homes, the bill:

- Decreases the applicable sales tax on the sale of a mobile home by calculating the sales tax on 50 percent of the sale price.
- Exempts from the sales tax a mobile home intended to be permanently affixed to the land and intended to be used as residential property.
- Revises requirements on how mobile home dealers offer and display mobile homes at a place of business.
- Revises features of repair and remodeling codes for mobile and manufactured homes.
- Clarifies provisions exempting mobile home park owners from the jurisdiction of the PSC when the park owners provide water and wastewater .
- Permits a mobile home park damaged or destroyed by wind, water, or other natural force to be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.
- Revises the rights and obligations of the park owner and the tenant in a mobile home park in a legal action based on nonpayment of rent.

II. Present Situation:

The various features of the bill principally address housing issues affecting local government development zoning, impact fees and affordable housing in chs. 125, 163, and 420, F.S., and statutes governing mobile homes within chs. 212, 320 and 723, F.S. The Present Situation within these general topic groupings is included in the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Bill Sections Addressing Development Zoning, Impact Fees, and Affordable Housing

Zoning and Impact Fees for Affordable Housing (Sections 1, 3 and 4)

Present Situation

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

Comprehensive Plans and Land Use Regulation

Local governments regulate aspects of land development by enacting ordinances which address local zoning, rezoning, subdivision, building construction, landscaping, tree protection[4] or sign regulations or any other regulations controlling the development of land.[5] "Land development regulation" is defined to include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of ch. 553, F.S., on Building Construction Standards.[6]

In 1985, the Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development. Section 163.3177, F.S., governs a locality's comprehensive plan which lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. Among the many components of a comprehensive plan is a land use element designating proposed future general distribution, location, and extent of the uses of land.[7] Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.[8]

State law requires a proposed comprehensive plan amendment to receive public hearings, the first held by the local planning board.[9] The local government must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council, and adjacent local governments that request to participate in the review process.[10]

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.[11] Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review

[4] Chapter 2019-155, Laws of Fla., prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the tree presents a danger to persons or property, as documented by a certified arborist or licensed landscape architect.
[5] *See* ss. 163.3164 and 163.3213, F.S. Pursuant to s. 163.3213, F.S., substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.
[6] Section 163.3213(1)(b), F.S.
[7] Section 163.3177(6)(a), F.S.
[8] *Id.* Section 163.3164(4), F.S., specifies the designation of an "agricultural enclave." Among other features, to be considered an agricultural enclave, a parcel must be owned by a single person, used for bona fide agricultural purposes, and must be surrounded by 75 percent by property that has existing or industrial, commercial, or residential development or property designated by the local government for such purposes.
[9] Sections 163.3174(4)(a) and 163.3184, F.S.
[10] Section 163.3184, F.S.
[11] Chapter 2011-139, s. 17, Laws of Fla.

Process.[12] The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.[13]

Sections 125.66, and 166.41, F.S., outline regular and emergency ordinance adoption procedures for counties and municipalities. Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the local government that change the actual zoning map designation of a parcel or parcels of land must follow additional enhanced procedures and requirements.[14]

Affordable Housing

Affordable housing is generally defined in relation to the annual area median income of the household living in the housing adjusted for family size. Section 420.0004, F.S., defines affordable to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for:

- Extremely-low-income households, i.e., total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state;[15]
- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income within the state or the area whichever is greater;[16]
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income within the state or the area whichever is greater;[17]
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income within the state or the area whichever is greater.[18]

Statutory Guidance on County and Municipal Affordable Housing

In 2001, the Legislature created ss. 125.01055[19] and 166.04151, F.S.,[20] respectively authorizing a county or municipality, notwithstanding any other provision of law, to "adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances."

"Inclusionary housing ordinances (sometimes called inclusionary zoning ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the

[12] *Id.*
[13] Section 163.3184(3), (4), F.S.
[14] *See* sections 125.66(4) and 166.041(3), F.S.
[15] Section 420.0004(9), F.S. Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.
[16] Section 420.0004(17), F.S. 'Area' in s. 420.0004, F.S., means within the metropolitan statistical area (MSA) or, if not within an MSA, within the county.
[17] Section 420.0004(11), F.S.(11), F.S.
[18] Section 420.0004(12), F.S.
[19] Chapter 2001-252, s. 16, Laws of Fla.
[20] Chapter 2001-252, s. 15, Laws of Fla.

development of market rate units. The intent of these ordinances is to increase the production of affordable housing in general and to increase the production in specific geographic areas that might otherwise not include affordable housing."[21]

Chapter 2019-165, L.O.F., amended ss. 125.01055 and 166.04151, F.S., to provide that a local inclusionary housing ordinance requiring a developer to provide a specified number of affordable housing units or requiring a developer to contribute to a housing fund must provide incentives to fully offset all costs to the developer of its affordable housing contribution. The developer offset provision does not apply in areas of critical state concern in Monroe County and the City of Key West.

Local Government Impact Fees[22]

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,[23] regulatory fees, and special assessments[24] to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.[25] Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

Chapter 2019-165, L.O.F., amended s. 163.31801, F.S., to codify the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the

[21] *Ross, J.* and *Outka, U.*, The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, *available at* https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf (last visited Jan. 6, 2020).
[22] Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, *available at* http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf (last visited Jan. 6, 2020).
[23] Id. Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.
[24] Id. Special assessments are typically used to construct and maintain capital facilities or to fund certain services.
[25] *See supra* note 22.

benefits accruing to the proposed new development.[26] Local governments are prohibited from requiring the payment of impact fees prior to issuing a property's building permit.[27]

Additionally, ch. 2019-165, L.O.F, established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.[28] Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.[29] Impact fee provisions in s. 163.31801, F.S., do not apply to water and sewer connection fees.

Local Government Financial and Economic Status Reporting

Local governments are accountable for the manner in which they spend public funds, and the submission of financial reports required by state law is one method of demonstrating accountability. Section 218.39, F.S., requires the completion of an annual financial audit of accounts and records within nine months after the end of the fiscal year for counties, district school boards, charter schools, and charter technical career centers and certain municipalities and special districts. The statute requires filing of these annual financial audit reports with the State of Florida's Auditor General.

Section 218.32, F.S., requires counties, municipalities, and special districts to complete and submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year no later than nine months after the end of the fiscal year. The AFR is not an audit but rather a unique financial document completed using a format prescribed by the DFS.[30]

The DFS's Bureau of Local Government has created a web-based AFR system called Local Government Electronic Reporting (LOGER) where local government entities complete and electronically submit AFRs.[31] DFS personnel verify an entity's data entered in LOGER by comparing the data to the financial statements included in the submitted audit report, or with other prescribed information from those entities not subject to the audit requirement and contact the entities for clarification when the comparisons yield significant differences.[32]

In addition to the above local government financial reporting, ch. 2019-56, L.O.F., amended ss. 129.03 and 166.241, F.S., to require counties and municipalities respectively to report certain economic status information to the Office of Economic and Demographic Research. This includes information on government spending and debt per resident, median income, average

[26] Section 163.31801(3)(f) and (g), F.S.
[27] Section 163.31801(3)(e), F.S.
[28] Section 163.31801(3)(h) and (i), F.S.
[29] Section 163.31801(8), F.S.
[30] See Department of Financial Services Bureau of Financial Reporting, *Uniform Accounting System Manual for Florida Local Governments* (2014), *available at* https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15_FINAL.pdf (last visited Jan. 6, 2020).
[31] LOGER is *available at* https://apps.fldfs.com/LocalGov/Reports/ (last visited Jan. 6, 2020).
[32] *See* Florida Auditor General, *Local Government Financial Reporting System: Performance Audit Report 2019-028* (Sep. 2019), *available at* https://flauditor.gov/pages/pdf_files/2019-028.pdf (last visited Jan. 6, 2020).

local government employee salary, percentage of budget spent on employee salaries and benefits, and the number of taxing districts.

Effect of the Bill

Sections 1 and 4 amend ss. 125.01055 and 166.04151, F.S., to -- notwithstanding any other law or local ordinance or regulation to the contrary -- authorize the board of a county commission and the governing body of a municipality, respectively, to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use.

Section 3 amends s. 163.31801, F.S., to require the reporting of impact fee charges data within the annual financial audit report items specified under s. 218.32, F.S. The data includes the specific purpose of an impact fee and the associated infrastructure need the fee meets; a description of the impact fee schedule policy and fee calculation methods; the amount assessed for each purpose and type of dwelling; and the total amount of impact fees charged by type of dwelling.

Accessory Dwelling Units (Section 2)

Present Situation

An accessory dwelling unit (ADU) is an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.[33] Section 163.31771, F.S., finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose. A local government may adopt an ordinance allowing ADUs in any area zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals in its jurisdiction.[34] Each ADU allowed by an ordinance under s. 163.31771, F.S., shall count towards the affordable housing component of the housing element in the local government's comprehensive plan.[35] An application for a building permit to construct such ADUs must include an affidavit which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.[36]

In 2019, the Florida Housing Coalition, the entity that currently provides technical assistance and training for the Catalyst Program under s. 420.531, F.S., published the *Accessory Dwelling Unit Guidebook.*[37] The stated intent of the Guidebook is to address the challenges and benefits a community might face as it considers allowing the implementation of ADUs and presents a range of alternatives for local governments and other stakeholders to consider and evaluate. Among other data points, the Guidebook found that:

- Of Florida's 67 counties, 16 did not address any accessory dwelling unit in their land development codes; and

[33] Section 163.31771(2)(a), F.S. ADUs are sometimes referred to as "granny flats" to denote their use in accommodating the housing needs of aging parents. ADUs have the potential to make the primary home more affordable by creating rental income for the homeowner, while also providing affordable rental housing.
[34] Section 163.31771(3), F.S.
[35] Section 163.31771(5), F.S.
[36] Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.
[37] *See* Florida Housing Coalition, *Accessory Dwelling Unit Guidebook*, (May 2019) *available at* https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf (last visited Jan. 7, 2020).

- Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts.

Effect of the Bill

Section 2 amends s. 163.31771, F.S., to find that it serves an important public purpose to require (rather than encourage) the permitting of accessory dwelling units in single-family residential areas. A local government must (rather than may) adopt an ordinance to allow accessory dwelling units in any area zoned for single family residential use. The required ordinance would not be conditioned upon a finding that there is a shortage of affordable rentals within the local jurisdiction.

State Apartment Incentive Loan Program: Local Government Contributions (Section 11)

Present Situation

The State Apartment Incentive Loan (SAIL) Program[38] provides low-interest loans on a competitive basis to affordable housing developers. SAIL is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the State Housing Trust Fund. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

Florida Housing Finance Corporation (Florida Housing) administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.[39]

Effect of the Bill

Section 11 amends provisions of the SAIL Program in s. 420.5087, F.S., to require the evaluation of additional components within the review and selection process of applications submitted for funding. The additional components relate to criteria surrounding local government contributions, including policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects.

Community Workforce Housing Innovation Pilot Program (Section 12)

Present Situation

Established by ch. 2006-69, L.O.F., the Community Workforce Housing Innovation Pilot Program (CWHIP) was created for the purpose of providing affordable rental and home ownership community workforce housing for essential services personnel with medium incomes

[38] *See* s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, *available at* http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited Jan. 3, 2020).
[39] Section 420.5087(6)(c), F.S.

in high-cost and high-growth counties. Designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources, Florida Housing administered the program in 2006 and 2007.[40]

CWHIP targeted households earning higher incomes than traditionally served through other affordable housing programs to create homeowner or rental housing for persons such as teachers, firefighters, healthcare providers and others as defined by local governments. Households earning up to 140 percent of AMI could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.[41]

CWHIP provided priority funding consideration to projects in counties where the disparity between the AMI and the median sales price for a single family home was greatest. Priority funding consideration was specified where:

- The local jurisdiction established local incentives such as expedited reviews of development orders and permits and supported development near transportation hubs;
- Financial strategies like tax increment financing were utilized; and
- Projects set aside at least 80% of units for workforce housing and at least 50% for essential services personnel.

CWHIP loans were awarded with a 1 to 3 percent interest rate and could be forgiven where long-term affordability was provided and where at least 80% of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services.[42]

Florida Housing administered two rounds of funding for CWHIP: $50 million in October of 2006 and $62.4 million in December of 2007.[43]

Effect of the Bill

Section 12 amends s. 420.5095, F.S., to transition the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by Florida Housing. Workforce housing is defined as housing affordable to persons of families whose total annual income does not exceed 80 percent of the area median income or 120 percent of the area median income, adjusted for household size in specified areas of critical concern. Florida Housing shall establish a loan application process pursuant to SAIL Program provisions under s. 420.5087, F.S., and award loans at a 1 percent interest rate for a term not to exceed 15 years. Projects must be given priority if they set aside at least 50 percent of units for workforce housing.

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[40] Section 420.5095(2), F.S.
[41] Section 420.5095(3)(a), F.S.
[42] Section 420.5095(11), F.S.
[43] *See* Florida Housing Finance Corporation, *2007 Annual Report* and *2008 Annual Report*, *available at* http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2007AnnualReport.pdf and http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport_CDfile.pdf (last visited Jan. 03, 2020).

Affordable Housing Workshops for Locally Elected Officials utilizing Catalyst and SHIP (Sections 13 and 16)

Present Situation

Affordable Housing Catalyst Program

Section 420.531, F.S., directs Florida Housing to operate the Affordable Housing Catalyst Program (Catalyst Program) to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, State Housing Initiatives Partnership Program, and other affordable housing programs.[44] Florida Housing currently contracts with the Florida Housing Coalition to provide Catalyst Program training and technical assistance.[45]

The Florida Housing Coalition's technical assistance team consists of a geographically dispersed network of personnel who provide on-site and telephone/e-mail technical assistance as well as training through workshops and webinars.[46] This technical assistance targets supporting local governments and nonprofit organizations and includes:

- Leveraging program dollars with other public and private funding sources;
- Working effectively with lending institutions;
- Implementing regulatory reform;
- Training for boards of directors;
- Implementing rehabilitation and emergency repair programs;
- Assisting with the creation of fiscal and program tracking systems; and
- Meeting compliance requirements of state and federally funded housing programs.

State Housing Initiatives Partnership Program (SHIP)

Administered by Florida Housing, the SHIP Program provides funds to all 67 counties and 52 Community Developments Block Grant entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.[47] The program targets very-low, low, and moderate-income families. SHIP is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund.

Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program.[48] Funds are expended per each local government's adopted Local

[44] To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization.
[45] *Contract for Affordable Housing Catalyst Services between Florida Housing Finance Corporation and the Florida Housing Coalition, Inc*., (July 1, 2019) *available at* https://www.floridahousing.org/docs/default-source/legal/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b_2 (last visited Jan 5, 2020).
[46] The *2019/2020 Catalyst Training Schedule* is *available at* https://www.floridahousing.org/docs/default-source/programs/special-programs/catalyst/training-schedule-catalyst-2019-2020.pdf?sfvrsn=2 (last visited Jan. 5, 2020). A link to the Florida Housing Coalition's *Work Shop and Webinar Calendar* is *available at https://www.flhousing.org/events/list/?tribe_paged=2&tribe_event_display=list* (last visited Jan. 5, 2020).
[47] *See* ss. 420.907-420.9089, F.S.
[48] Section 420.9073, F.S.

Housing Assistance Plan (LHAP), which details the housing strategies they will use.[49] Local governments submit their LHAPs to Florida Housing for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. Florida Housing must approve an LHAP before a local government may receive SHIP funding for the applicable years.

SHIP Incentive Strategies and Advisory Committee

Within 12 months of adopting a LHAP, each participating local government must amend the plan to include local housing incentive strategies.[50] The strategies must:

- Assure that permits for affordable housing projects are expedited;
- Establish an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing; and
- Include a schedule for implementing the incentive strategies.[51]

Local governments must appoint members to an Affordable Housing Advisory Committee (AHAC) to triennially review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan.[52] The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.[53] At a minimum, each AHAC must submit a report to the local governing body on certain affordable housing incentives including:

- The processing of approvals of development orders or permits for affordable housing.
- The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.
- The allowance of flexibility in densities for affordable housing.
- The allowance of affordable accessory residential units in residential zoning districts.
- The reduction of parking and setback requirements for affordable housing.

Local governments that receive the minimum allocation under SHIP[54] must perform the initial incentives review but may elect to not perform the subsequent triennial reviews.

Statutorily Authorized Affordable Housing Study Groups

In 1986, the Affordable Housing Study Commission (Commission) was statutorily created to evaluate affordable housing policy issues and programs.[55] This standing commission is charged with recommending public policy changes to the Governor and Legislature to stimulate community development and revitalization and promote the production, preservation and maintenance of decent, affordable housing for all Floridians. Section 420.609, F.S., specifies the make-up of 21 members who are appointed by the Governor to the Commission. Florida

[49] Section 420.9075, F.S.
[50] Section 420.9076(1), F.S.
[51] Section 420.9071(16), F.S.
[52] Section 420.9076(4), F.S.
[53] Section 420.9076(2), F.S.
[54] Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is $350,000.
[55] Chapter 86-192 Laws of Fla.

Housing provides administrative support to the Commission, but the Commission has not received funding or gubernatorial appointments since 2008.[56]

The 2017 Legislature created a statewide Affordable Housing Workgroup (Workgroup).[57] The 14-member body consisted of current and previously elected state and local officials as well as stakeholders from the private and non-profit affordable housing community. The Workgroup's final report was submitted to the Governor and Legislature and provided findings and recommendations to address the state's affordable housing needs including strategies and pathways for low-income housing in the state.[58]

Effect of the Bill

Section 13 amends s. 420.531, F.S., to establish biannual regional workshops for locally elected officials serving on affordable housing advisory committees as provided for by SHIP in s. 420.9076, F.S. The entity providing statewide training and technical assistance for the Catalyst Program authorized in s. 420.531, F.S., will administer and conduct the workshops with the intent of facilitating peer-to-peer identification and sharing of best affordable housing practices. Workshops may be conducted through teleconferencing or other technological means. Annual reports summarizing each region's deliberations and recommendations, as well as local official attendance records, must be submitted to the President of the Senate, the Speaker of the House, and Florida Housing Finance Corporation.

The section also includes SAIL among the programs listed for which Catalyst Program may provide technical support.

Section 16 amends s. 420.9076, F.S., to modify requirements of SHIP affordable housing advisory committees. The new provisions include ensuring that one locally elected official from each participating SHIP county or municipality serves on the advisory committee. This official, or a locally elected designee, must attend biannual workshops on affordable housing best practices as provided for in section 13 of the bill. If a locally elected official fails to attend three consecutive regional workshops, Florida Housing may withhold the participating SHIP entity's funds pending the person's attendance at the next regularly scheduled biannual meeting.

The section also requires annual, rather than triennial, affordable housing advisory committee reviews of local policies and provisions affecting affordable housing. An annual report of advisory committee reviews and recommendations must be submitted to the local governing body and to the entity providing statewide training and technical assistance for the Catalyst Program. In addition to currently provided information, the report must now also include information on all allowable fee waivers for the development or construction of affordable housing.

[56] Commission Annual Reports submitted from 1987-2008 are *available at* http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm (last visited Jan. 6, 2020).
[57] Chapter 2017-071, s. 46, Laws of Fla. Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity.
[58] The Workgroup's Final Report, meeting agendas, research materials and other information is available at https://www.floridahousing.org/about-florida-housing/workgroup-on-affordable-housing (last visited Jan. 6, 2020).

Funding Transitional Housing for Persons Aging out of Foster Care (Section 14)

Present Situation

Affordable Housing Funding for Special Needs Populations

Section 420.0004, F.S., defines a person with special needs as:

> an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5); a survivor of domestic violence as defined in s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

Each local government participating in the SHIP Program (see page 10 of the analysis for a summary of the general elements and governance of SHIP) must use a minimum of 20 percent of its local housing distribution to serve persons with special needs as defined above in s. 420.0004, F.S.[59] A local government must certify that it will meet this requirement through existing approved strategies in its LHAP.

Section 420.507(48), F.S., requires Florida Housing to reserve up to 5 percent of certain annual allocations[60] for high-priority affordable housing projects for veterans and their families, and other special needs populations. Florida Housing must reserve an additional 5 percent of each allocation for affordable housing projects that target persons who have a disabling condition.

According to the statewide 2019 Rental Market Study, an estimated 104,273 cost burdened renter households receive disability-related Social Security, SSI, and veterans' benefits statewide.[61] Based on service use, an estimated 7,836 survivors of domestic violence and 2,574 youth exiting foster care are in need of affordable housing.[62]

Services and Support for Persons Aging Out of Foster Care

Sections 39.6251 and 409.1451, F.S., require the Department of Children and Families to administer an array of independent living services to eligible young adults ranging in ages 18-22 (not yet 23), including supports in making the transition to self-sufficiency.[63]

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[59] Section 420.9075(5)(d), F.S.

[60] These allocations include those for low-income housing tax credits, nontaxable revenue bonds, and SAIL funds appropriated by the Legislature.

[61] Shimberg Center for Housing Studies, University of Florida, 2019 Rental Market Study (May 2019) *available at* http://www.shimberg.ufl.edu/publications/RMS_2019.pdf (last visited Jan. 14, 2020). The Rental Market Study defines 'cost burdened' to mean the household is paying at least 40 percent of income toward gross rent.

[62] *Id.*

[63] Information in this section related to independent living services and extended foster care is drawn from the Department of Children and Families, *Independent Living Services Annual Report* (Jan. 31, 2019) *available at* https://www.myflfamilies.com/service-programs/child-welfare/docs/2019LMRs/Independent%20Living%20Services%202018%20Annual%20Report.pdf (last visited Jan. 14, 2020).

Extended Foster Care (EFC) provides eligible young adults the option of remaining in foster care until the age of 21 or until the age of 22 if they have a disability. EFC is a voluntary program that requires the young adult to agree to participate in school, work, or a work training program in accordance with federal and state guidelines. Exceptions and accommodations are made for young adults with a documented disability.

Effect of the Bill

Section 14 amends s. 420.9073, F.S., to authorize Florida Housing to withhold five percent of annual Local Government Housing Trust Fund distributions to eligible SHIP entities for use as additional resources to construct campus-setting transitional housing for persons aging out of foster care. Funds may not be used for design and planning and Florida Housing must consult with the Department of Children and Families on criteria for such housing. Any withheld funds not distributed or committed by the end of the year fiscal year shall be distributed utilizing existing calculation formulas.

Annual SHIP Entity Reporting Submissions to Florida Housing (Section 15)

Present Situation

Section 420.9075(10), F.S., requires each local government participating in SHIP (see page 10 of the analysis for a summary of the general elements and governance of SHIP) to annually submit a report of its affordable housing programs and accomplishments to Florida Housing. The local government's chief elected official or his or her designee must certify the report as accurate and complete.[64] Among the many items included in the report are:

- The number of households served by income category, age, family size, and race, and data regarding any special needs populations.
- The number of units and the average cost of producing units under each local housing assistance strategy.
- By income category, the number of mortgages made, the average mortgage amount, and the rate of default.
- A description of the status of implementation of each local housing incentive strategy.[65]
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If, as a review of the report, Florida Housing determines a violation of the criteria for a LHAP or that an eligible sponsor or eligible person has violated the applicable award conditions, Florida Housing reports the violation to its compliance monitoring agent and the Executive Office of the Governor.[66] If a violation is deemed to have occurred, the distribution of program funds to the local government must be suspended until the violation is corrected.[67]

Effect of the Bill

Section 15 amends s. 420.9075, F.S., to include data on the number of affordable housing applications submitted, approved and denied within a SHIP entity's annual program reporting to Florida Housing.

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[64] Section 420.4075(1), F.S., requires availability of the report for public inspection and comment prior to certifying and transmitting it to Florida Housing.
[65] Section 420.5075(10), F.S.
[66] Section 420.9075(13), F.S.
[67] *Id.*

Bill Sections Addressing Mobile Homes

Mobile Home Act

Chapter 723, F.S., the "Florida Mobile Home Act" (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.[68] The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[69]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[70]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[71]

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of $4 for each mobile home lot within a mobile home park which he or she owns.[72] If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in in court until the amount due, plus any penalty, is paid.[73]

Additionally, a surcharge of $1 is levied on each annual fee. The surcharge collected must be deposited in the Florida Mobile Home Relocation Trust Fund.[74]

Mobile Home Sales Tax (Sections 5 and 6)

Present Situation

The sales tax on tangible personal property is six percent of the sales price when sold at retail.[75] Aircrafts, boats, and mobile homes are also assessed a sales tax of six percent of the retail sale price.[76]

A mobile home may be taxed as real property and not as tangible property, if a taxpayer purchases a mobile home that is then affixed permanently to land owned by the taxpayer.[77] The taxpayer must apply to the local property appraiser for a declaration of real property. As part of

[68] Section 723.004, F.S.
[69] Section 723.002(1), F.S.
[70] Section 723.003(12), F.S.
[71] Section 723.003(11), F.S.
[72] Section 723.007(1), F.S.
[73] *Id.*
[74] Section 723.007(2), F.S.
[75] Section 212.05(1)(a)1.a., F.S.
[76] Section 212.05(1)(b)1.b., F.S.
[77] Section 320.015, F.S.

the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer.[78]

The Department of Highway Safety and Motor Vehicles (DHSMV) must provide "RP" stickers to tax collectors for use by the registered owner of a mobile home or recreational vehicle to affix to such vehicle when the vehicle is taxed as real property. The "RP" sticker is used in lieu of a license plate.[79]

Improvements to real property may be considered when determining the tax assessed on real property.[80] When determining whether a person has improved real property, the term "fixtures" means:

> [I]tems that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.[81]

Effect of the Bill

Section 5 amends s. 212.05, F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the six percent sales tax is calculated on 50 percent of the sales price of the mobile home rather than 100 percent of the sales price. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

This section also exempts a mobile home from the sales tax if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a "RP" series sticker pursuant to s. 320.0815(2), F.S.

Section 6 amends s. 212.06, F.S., to exempt from taxation as tangible property (sales tax) mobile homes intended to be qualified and taxed as real property pursuant to s. 320.0815(2), F.S.

[78] *See* ss. 212.06(14)(a) and 320.0815, F.S.
[79] Section 320.0815(2), F.S.
[80] Section 212.06(14)(a), F.S., defines "real property" to mean the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."
[81] Section 212.06(14)(b), F.S.

Mobile Home Dealer Display Requirements (Section 7)

Present Situation

A mobile home dealer must hold a license issued by the DHSMV.[82] The term "dealer" means "any person engaged in the business of buying, selling, or dealing in mobile homes or offering or displaying mobile homes for sale." The term includes a mobile home broker.[83] Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more mobile homes in any 12-month period is prima facie presumed to be a dealer. The term "dealer" does not include banks, credit unions, or finance companies that acquire mobile homes as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes to dealers licensed under this section.[84]

The place of business of the mobile home dealer must be at a permanent location, not a tent or a temporary stand or other temporary quarters. The location of the place of business must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale.[85]

Effect of the Bill

Section 7 amends s. 320.77, F.S., to remove the requirement that a place of business of a mobile home dealer must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale. Under the bill, the place of business of a mobile home dealer must have sufficient space to display a manufactured home as a model home.

Repair and Remodeling Codes for Mobile and Manufactured Homes (Sections 8 and 9)

Present Situation

Chapter 320, F.S., relates to the regulation and enforcement of motor vehicle standards and licenses by the DHSMV.

Section 320.01(2)(a), F.S., defines the term "mobile home" to mean:

> [A] structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may

[82] Section 320.77(2), F.S.
[83] *See* s. 320.77(1)(b), F.S., defining the term "mobile home broker."
[84] Section 320.77(1)(a), F.S.
[85] Section 320.77(3)(h), F.S.

> in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

Section 320.01(2)(b), F.S., defines the term "manufactured home" to mean:

> [A] mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

Section 320.822(2), F.S., defines the term "code" to include the "Mobile Home Repair and Remodeling Code" and the "Used Recreational Vehicle Code."

Section 320.8232(2), F.S., requires that the provisions of the "Repair and Remodeling Code" ensure safe and livable housing and that the code not be more stringent than those standards required to be met in the manufacture of mobile homes. Such provisions must include, but not be limited to, standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. Section 320.822(2), F.S., uses the term "Repair and Remodeling Code" and not the term "Mobile Home Repair and Remodeling Code."

Subsection (1) of s. 320.822, F.S., requires compliance with the "Used Recreational Vehicle Code" for recreational vehicles manufactured after January 1, 1968, and sold or offered for sale in this state by a dealer or manufacturer.

Effect of the Bill

Section 8 amends s. 320.822, F.S., to revise the term "Mobile Home Repair and Remodeling Code" to the "Mobile and Manufactured Home Repair and Remodeling Code."

Section 9 amends s. 320.8232, F.S., to require the Mobile and Manufactured Home Repair and Remodeling Code to be a uniform code. The term "uniform code" is not defined by statute. The bill does not specify that the code must be a statewide uniform code. However, the bill requires that all repairs and remodeling of mobile and manufactured homes must be performed in accordance with rules of the DHSMV.

Jurisdiction of the Public Service Commission: Mobile Home Parks and Water and Wastewater Systems (Section 10)

Present Situation

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and wastewater companies. These privately-owned companies are referred to as "investor-owned utilities," or "IOUs."[86]

[86] IOUs can range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[87] Currently, the PSC has jurisdiction over 150 water and wastewater IOUs in 38 of 67 counties in Florida.[88]

The remaining water and wastewater customers in the state are not subject to PSC regulation and are served either by IOUs in non-jurisdictional counties, by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities or by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits).[89]

Section 367.022(5), F.S., exempts from regulation by the PSC "landlords providing [water or wastewater] service to their tenants without specific compensation for the service." Section 367.022(9), F.S., also exempts from regulation any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water service plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of service.

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home subdivision" means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.[90]
- "Mobile home lot rental agreement" or "rental agreement" means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.[91]
- "Lot rental amount" means all financial obligations, except user fees, which are required as a condition of the tenancy.[92]
- "User fees" means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.[93]

Effect of the Bill

Section 10 amends s. 367.022, F.S., to add an exemption to regulation by the PSC as a utility for the owner of a mobile home park operating both as a mobile home park and a mobile home subdivision who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

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[87] Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.
[88] *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission (June 2019), *available at* http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf (last visited Jan. 3, 2020).
[89] *See* s. 367.022, F.S.
[90] Section 723.003(14), F.S.
[91] Section 723.003(10), F.S.
[92] Section 723.003(6), F.S.
[93] Section 723.003(21), F.S.

Replacing Mobile Homes in a Mobile Home Park (Section 17)

Present Situation

Except as expressly preempted by the requirements of the DHSMV, a mobile home owner or the park owner may not "site any size new or used mobile home and appurtenances on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park."[94]

Effect of the Bill

Section 17 amends s.723.041, F.S., to provide that a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed. This section also provides that the regulation of the uniform firesafety standards established under s. 633.206, F.S., are not limited by s.723.041, F.S. However, s. 723.041, F.S., supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Mobile Home Park Lot Termination of Tenancy (Sections 18 and 19)

Present Situation

Section 723.061, F.S., provides grounds for the termination of a mobile home park lot rental agreement on the basis of:

- Nonpayment of rent;
- Conviction of a violation of a federal or state law or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park;
- A violation of the park rules or of the rental agreement;
- A change in land use; or
- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

Notices to a mobile home owner and tenant or occupant under s. 723.061, F.S., must be in writing and sent by certified or registered mail, return receipt requested, addressed to the mobile home owner and tenant or occupant at her or his last known address.[95] Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

Section 723.063, F.S., provides the process for a court action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof. The mobile homeowner may defend upon the grounds of a material noncompliance with any portion of ch. 723, F.S., or may raise any other defense, whether legal or equitable, which he or she may have.[96]

If a park owner or a mobile home owner files a lawsuit based on the homeowner's nonpayment of rent, the mobile home owner must pay into the registry of the court that portion of the accrued

[94] Section 723.041(4), F.S.
[95] Section 723.061, F.S. Requirements differ for notices sent to the officers of the homeowners' association in the event of a change in use of the land comprising the mobile home park.
[96] Section 723.063(1), F.S.

rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court must notify the mobile home owner of this requirement. If the mobile home owner fails to pay the rent, or portion thereof, into the registry of the court, the mobile home owner waives the right to all defenses other than payment, and the park owner is entitled to an immediate default.[97]

The court must advance a hearing on a park owner's claim of nonpayment of rent, if the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises. After a preliminary hearing, the court may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.[98]

Effect of the Bill

Section 18 amends s. 723.061, F.S., to have mobile home park owners send notices to a mobile home owner and tenant or occupant by U.S. Mail rather than by certified or registered mail, return receipt requested.

This section also provides that a park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, if a park owner accepts payment for any portion of a lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement. This provision applies to violations related to the tenant's nonpayment of rent, conviction of a violation of a federal or state law or local ordinance that is detrimental to the health, safety, or welfare of other residents of the mobile home park, a violation of the park rules or of the rental agreement, or failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

However, a park owner's acceptance of any portion of a lot rental amount may constitute a waiver of the right to terminate the rental agreement or the right to bring a civil action for the noncompliance for any subsequent or continuing noncompliance. Any rent so received by the park owner must be accounted for at the final hearing.

This section also amends s. 723.061, F.S., to require a tenant who intends to defend against an action by the landlord for possession to comply with s. 723.063(2), F.S.

Section 19 amends s. 723.063, F.S., to require a mobile home owner to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes. If the motion is not timely filed by the homeowner, the homeowner tenant is deemed to have waived all defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. If a motion to determine rent is filed, sworn documentation is required to support a tenant's allegation that the rental amount alleged in the complaint is erroneous.

[97] Section 723.063(2), F.S.
[98] Section 723.063(3), F.S.

This section also removes the condition that the park owner must be in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises before the park owner may apply to the court for disbursement of all or part of the funds or for a prompt final hearing. Under the bill, a park owner may file such a motion with the court when the home owner deposits the contested rent into the registry of the court.

Bill Sections Addressing Reenacting Issues and Effective Date

Effects of the Bill

Section 20 reenacts a portion of s. 420.507, F.S., to incorporate the amending language in section 11 of the bill.

Section 21 reenacts a portion of s. 193.018, F.S., to incorporate the amending language in section 12 of the bill.

Section 22 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

State mandates on local governments are generally described in the Florida Constitution as general laws requiring counties or municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state-shared tax revenue. In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.[99]

Article VII, Section 18(a) of the Florida Constitution, provides that counties and municipalities are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020 is forecast at approximately $2.2 million. [100,101,102]

The bill will require counties and cities to incur costs to adopt an ordinance to allow accessory dwelling units. If the cumulative cost for counties and cities to adopt accessory

[99] Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate, and T.K. Wetherell, Speaker of the House, *County and Municipal Mandates Analysis,* (March 7, 1991) (on file with the Senate Committee on Community Affairs).
[100] FLA. CONST. art. VII, s. 18(d).
[101] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at:* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 7, 2020).
[102] Based on the Florida Demographic Estimating Conference's July 8, 2019 population forecast for 2020 of 21,555,986. The conference packet is *available at*: http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 7, 2020).

dwelling unit ordinances is determined to exceed $2.2 million, paragraph (a) of section 18 would require the bill to contain a finding of important state interest and meet one of the exceptions specified in that paragraph: provision of funding or a funding mechanism, or enactment by vote of two-thirds of the membership in each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

As of this date, the Revenue Estimating Conference has not met to consider the proposed fiscal impact of the bill.

The bill amends s. 212.05(1)(a)1.b., F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the 6 percent sales tax is calculated on 50 percent of the sales price of the mobile home. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

The bill exempts a mobile home from the sales tax, if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a “RP” series sticker pursuant to s. 320.0815(2), F.S.

B. Private Sector Impact:

A purchaser of a mobile home would pay a reduced sales tax. Mobile home park owners may experience savings because the bill allows certain noticing by U.S. mail rather than certified mail.

C. Government Sector Impact:

General revenue collections from the state sales tax will decrease because of the revised method for calculating the sales tax on mobile home sales.

Local governments currently collecting impact fees and certain other fees for the development or construction of affordable housing will no longer receive these revenues.

The Affordable Housing Catalyst Program will incur new costs related to the administration of regional affordable housing workshops for locally elected officials as specified in sections 15 and 18 in the bill. These costs will be dependent on whether the method of delivery is in person or by teleconference.

Local governments may incur travel expenses linked to elected official attendance at regional affordable housing workshops.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A Department of Revenue analysis of the bill opined that allowing a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating they intend to have the mobile home declared as real property taxes after the initial purchase potentially raises administrative difficulties.[103] Specifically, the bill provides no process for verification that the purchaser completes the required process necessary for the mobile home to be declared as real property. Also, if the mobile home is not declared as real property, and remains tangible personal property, then the purchaser has failed to remit sales/use tax on the mobile home. Additionally, the mobile home may not be properly assessed for local property taxes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 163.31771, 163.31801, 166.04151, 212.05, 212.06, 320.77, 320.822, 320.8232, 367.022, 420.5087, 420.5095, 420.531, 420.9073, 420.9075, 420.9076, 723.041, 723.061, 723.063, 420.507, and 193.018.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 13, 2020:

- Removes a provision prohibiting local governments from collecting impact fees and specified other fees for the development or construction of affordable housing.
- Restores language set for removal in the original bill providing that local governments granting impact fee waivers for affordable housing do not have to use revenues to offset such waivers.

[103] Department of Revenue, *Agency Bill Analysis of SB 998* (Dec. 17, 2019) (on file with the Senate Committee on Community Affairs).

- Provides that the bill's required local government ordinance allowing ADUs applies in areas zoned for single-family residential use rather than areas zoned for any residential use.
- Removes a newly proposed process for local government approvals of development permits, construction permits, or certificates of occupancy which would apply specifically for affordable housing.
- Changes an intended priority funding criteria within the Workforce Housing Loan Program to set aside "at least 50 percent of units" for workforce housing.
- Removes a newly proposed Rental to Homeownership Program tied to the awarding of rental funding in ch. 420, F.S.
- Authorizes Florida Housing to withhold up to 5 percent of annual Local Government Housing Trust Fund distributions to fund transitional housing for persons aging out of foster care.
- Removes proposed changes to funding reservation percentage categories and administrative cost caps in the SHIP Program.
- Adds data reporting within a SHIP entity's submissions to Florida Housing on applications received, approved and denied.
- Changes the frequency of proposed locally elected regional workshops on affordable housing from quarterly to biannually and permits three absences (rather than one) before Florida Housing may withhold a local government's SHIP funding.
- Removes some cross references and statutory reenactments made unnecessary by the other changes in the bill.
- Clarifies provisions exempting mobile home park owners from the jurisdiction of the PSC when they provide water and wastewater.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 125.01055, Florida Statutes, to read:

125.01055 Affordable housing.—

(4) Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as

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defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.

Section 2. Subsections (1), (3), and (4) of section 163.31771, Florida Statutes, are amended to read:

163.31771 Accessory dwelling units.—

(1) The Legislature finds that the median price of homes in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban areas. The Legislature finds that the cost of rental housing has also increased steadily and the cost often exceeds an amount that is affordable to extremely-low-income, very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state. This shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state. Therefore, the Legislature finds that it serves an important public purpose to require ~~encourage~~ the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for extremely-low-income, very-low-income, low-income, or moderate-income persons.

(3) A ~~Upon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction, the~~ local government shall ~~may~~ adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use.

(4) ~~If the local government adopts an ordinance under this section,~~ An application for a building permit to construct an accessory dwelling unit must include an affidavit from the

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applicant which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.

Section 3. Subsection (10) is added to section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(10) In addition to the items that must be reported in the annual financial reports under s. 218.32, a county, municipality, or special district must report all of the following data on all impact fees charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of dwelling.

Section 4. Subsection (4) is added to section 166.04151, Florida Statutes, to read:

166.04151 Affordable housing.—

(4) Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a municipality may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.

Section 5. Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type <u>that</u> ~~which~~ is required to be registered, licensed, titled, or documented in this state or by the United States Government shall be subject to tax at the rate provided in this paragraph. <u>A mobile home shall be assessed sales tax at a rate of 6 percent on 50 percent of the sales price of the mobile home, if subject to sales tax as tangible personal property. However, a mobile home is not subject to sales tax if the mobile home is intended to be permanently affixed to the land and the purchaser signs an</u>

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affidavit stating that he or she intends to seek an "RP" series sticker pursuant to s. 320.0815(2). The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price that ~~which~~ is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed pursuant to this subparagraph.

2. This paragraph does not apply to the sale of a boat or aircraft by or through a registered dealer under this chapter to a purchaser who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on

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in this state any employment, trade, business, or profession in which the boat or aircraft will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state, or is a noncorporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs who is a resident of, or makes his or her permanent abode in, this state. For purposes of this exemption, either a registered dealer acting on his or her own behalf as seller, a registered dealer acting as broker on behalf of a seller, or a registered dealer acting as broker on behalf of the purchaser may be deemed to be the selling dealer. This exemption shall not be allowed unless:

a. The purchaser removes a qualifying boat, as described in sub-subparagraph f., from the state within 90 days after the date of purchase or extension, or the purchaser removes a nonqualifying boat or an aircraft from this state within 10 days after the date of purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of the repairs or alterations; or if the aircraft will be registered in a foreign jurisdiction and:

(I) Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days after the date of purchase;

(II) The purchaser removes the aircraft from the state to a foreign jurisdiction within 10 days after the date the aircraft is registered by the applicable foreign airworthiness authority; and

(III) The aircraft is operated in the state solely to

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remove it from the state to a foreign jurisdiction.

For purposes of this sub-subparagraph, the term "foreign jurisdiction" means any jurisdiction outside of the United States or any of its territories;

b. The purchaser, within 30 days from the date of departure, provides the department with written proof that the purchaser licensed, registered, titled, or documented the boat or aircraft outside the state. If such written proof is unavailable, within 30 days the purchaser shall provide proof that the purchaser applied for such license, title, registration, or documentation. The purchaser shall forward to the department proof of title, license, registration, or documentation upon receipt;

c. The purchaser, within 10 days of removing the boat or aircraft from Florida, furnishes the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of Florida. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 5 days of the date of sale, provides to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the purchaser attesting that he or she has read the provisions of this section;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. ~~Unless~~ The nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this

state within 10 days after the date of purchase or when the boat is repaired or altered, within 20 days after completion of the repairs or alterations, the nonresident purchaser applies to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The nonresident purchaser of a qualifying boat may apply to the selling dealer within 60 days after the date of purchase for an extension decal that authorizes the boat to remain in this state for an additional 90 days, but not more than a total of 180 days, before the nonresident purchaser is required to pay the tax imposed by this chapter. The department is authorized to issue decals in advance to dealers. The number of decals issued in advance to a dealer shall be consistent with the volume of the dealer's past sales of boats which qualify under this sub-subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, before delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued, except the extension decal shall cost $425.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal's date of expiration.

(IV) The department is authorized to require dealers who purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.


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(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal before permanently removing the boat from the state, or defaces, changes, modifies, or alters a decal in a manner affecting its expiration date before its expiration, or who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4) to administer and enforce the provisions of this subparagraph.

If the purchaser fails to remove the qualifying boat from this state within the maximum 180 days after purchase or a

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nonqualifying boat or an aircraft from this state within 10 days after purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of such repairs or alterations, or permits the boat or aircraft to return to this state within 6 months from the date of departure, except as provided in s. 212.08(7)(fff), or if the purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the purchaser shall be liable for use tax on the cost price of the boat or aircraft and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2). The maximum 180-day period following the sale of a qualifying boat tax-exempt to a nonresident may not be tolled for any reason.

Section 6. Paragraph (b) of subsection (14) of section 212.06, Florida Statutes, is amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(14) For the purpose of determining whether a person is improving real property, the term:

(b) "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner:

1. Property of a type that is required to be registered,


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licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except the term includes mobile homes assessed as real property or intended to be qualified and taxed as real property pursuant to s. 320.0815(2).~~, or~~

2. Industrial machinery or equipment.

For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.

Section 7. Paragraph (h) of subsection (3) of section 320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(h) Certification by the applicant:

1. That the location is a permanent one, not a tent or a temporary stand or other temporary quarters.~~; and,~~

2. Except in the case of a mobile home broker, that the location affords sufficient ~~unoccupied~~ space to display ~~store all mobile~~ homes ~~offered and displayed~~ for sale. A space to display a manufactured home as a model home is sufficient to satisfy this requirement.~~; and that~~ The location must be ~~is~~ a suitable place in which the applicant can in good faith carry on

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business and keep and maintain books, records, and files necessary to conduct such business, which must ~~will~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees.

This paragraph does ~~subsection shall~~ not preclude a licensed mobile home dealer from displaying and offering for sale mobile homes in a mobile home park.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 8. Paragraph (c) of subsection (2) of section 320.822, Florida Statutes, is amended to read:

320.822 Definitions; ss. 320.822-320.862.—In construing ss. 320.822-320.862, unless the context otherwise requires, the following words or phrases have the following meanings:

(2) "Code" means the appropriate standards found in:

(c) The Mobile and Manufactured Home Repair and Remodeling Code and the Used Recreational Vehicle Code.

Section 9. Subsection (2) of section 320.8232, Florida Statutes, is amended to read:

320.8232 Establishment of uniform standards for used recreational vehicles and repair and remodeling code for mobile homes.—

(2) The Mobile and Manufactured Home ~~provisions of the~~ Repair and Remodeling Code must be a uniform code, must ~~shall~~

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ensure safe and livable housing, and may ~~shall~~ not be more stringent than those standards required to be met in the manufacture of mobile homes. Such code must ~~provisions shall~~ include~~, but not be limited to,~~ standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. All repairs and remodeling of mobile and manufactured homes must be performed in accordance with department rules.

Section 10. Subsections (5) and (9) of section 367.022, Florida Statutes, are amended to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(5) Landlords providing service to their tenants without specific compensation for the service. This exemption includes an owner of a mobile home park or a mobile home subdivision, as defined in s. 723.003, who is providing service to any person who:

(a) Is leasing a lot;

(b) Is leasing a mobile home and a lot; or

(c) Owns a lot in a mobile home subdivision.

(9) Any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water and wastewater service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

Section 11. Paragraph (c) of subsection (6) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is

hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee for the competitive evaluation and selection of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor’s agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period that exceeds the minimum required by federal law or this part.

4. Sponsor’s agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the

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state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor’s agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost, except that the share of the loan attributable to units serving extremely-low-income persons must be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing and policies that promote access to public transportation, reduce the need for onsite parking, and expedite permits for affordable housing projects.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor’s prior experience.

13. Sponsor’s ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate of the developer and general contractor, as provided in s. 420.507(47).


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Section 12. Section 420.5095, Florida Statutes, is amended to read:

420.5095 Community Workforce Housing Loan ~~Innovation Pilot~~ Program.—

(1) The Legislature finds and declares that recent rapid increases in the median purchase price of a home and the cost of rental housing have far outstripped the increases in median income in the state, ~~preventing essential services personnel from living in the communities where they serve and thereby~~ creating the need for innovative solutions for the provision of housing opportunities ~~for essential services personnel~~.

(2) The Community Workforce Housing Loan ~~Innovation Pilot~~ Program is created to provide ~~affordable rental and home ownership community~~ workforce housing for persons ~~essential services personnel~~ affected by the high cost of housing~~, using regulatory incentives and state and local funds to promote local public-private partnerships and leverage government and private resources~~.

(3) For purposes of this section, the term~~:~~

~~(a)~~ "workforce housing" means housing affordable to natural persons or families whose total annual household income does not exceed 80 ~~140~~ percent of the area median income, adjusted for household size, or 120 ~~150~~ percent of area median income, adjusted for household size, in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years before ~~prior to~~ removal of the designation.


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~~(b) "Public-private partnership" means any form of business entity that includes substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the project is to be located, and at least one private sector for-profit or not-for-profit business or charitable entity, and may be any form of business entity, including a joint venture or contractual agreement.~~

(4) The Florida Housing Finance Corporation is authorized to provide loans under the ~~Community Workforce Housing Innovation Pilot~~ program ~~loans~~ to applicants ~~an applicant~~ for construction ~~or rehabilitation~~ of workforce housing ~~in eligible areas. This funding is intended to be used with other public and private sector resources~~.

(5) The corporation shall establish a loan application process under s. 420.5087 ~~by rule which includes selection criteria, an application review process, and a funding process~~. ~~The corporation shall also establish an application review committee that may include up to three private citizens representing the areas of housing or real estate development, banking, community planning, or other areas related to the development or financing of workforce and affordable housing.~~

~~(a) The selection criteria and application review process must include a procedure for curing errors in the loan applications which do not make a substantial change to the proposed project.~~

~~(b) To achieve the goals of the pilot program, the application review committee may approve or reject loan applications or responses to questions raised during the review~~

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~~of an application due to the insufficiency of information provided.~~

~~(c) The application review committee shall make recommendations concerning program participation and funding to the corporation's board of directors.~~

~~(d) The board of directors shall approve or reject loan applications, determine the tentative loan amount available to each applicant, and rank all approved applications.~~

~~(e) The board of directors shall decide which approved applicants will become program participants and determine the maximum loan amount for each program participant.~~

~~(6) The corporation shall provide incentives for local governments in eligible areas to use local affordable housing funds, such as those from the State Housing Initiatives Partnership Program, to assist in meeting the affordable housing needs of persons eligible under this program. Local governments are authorized to use State Housing Initiative Partnership Program funds for persons or families whose total annual household income does not exceed:~~

~~(a) One hundred and forty percent of the area median income, adjusted for household size; or~~

~~(b) One hundred and fifty percent of the area median income, adjusted for household size, in areas that were designated as areas of critical state concern for at least 20 consecutive years prior to the removal of the designation and in areas of critical state concern, designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing.~~

~~(7) Funding shall be targeted to innovative projects in~~


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~~areas where the disparity between the area median income and the median sales price for a single-family home is greatest, and where population growth as a percentage rate of increase is greatest. The corporation may also fund projects in areas where innovative regulatory and financial incentives are made available. The corporation shall fund at least one eligible project in as many counties and regions of the state as is practicable, consistent with program goals.~~

(6)~~(8)~~ Projects must be given ~~shall receive~~ priority consideration for funding if ~~where~~:

(a) The local jurisdiction has adopted, or is committed to adopting, appropriate regulatory incentives, ~~or the local jurisdiction or public-private partnership has adopted or is committed to adopting~~ local contributions or financial strategies, or other funding sources to promote the development and ongoing financial viability of such projects. Local incentives include such actions as expediting review of development orders and permits, supporting development near transportation hubs and major employment centers, and adopting land development regulations designed to allow flexibility in densities, use of accessory units, mixed-use developments, and flexible lot configurations. Financial strategies include such actions as promoting employer-assisted housing programs, providing tax increment financing, and providing land.

~~(b) Projects are innovative and include new construction or rehabilitation; mixed-income housing; commercial and housing mixed-use elements; innovative design; green building principles; storm-resistant construction; or other elements that reduce long-term costs relating to maintenance, utilities, or~~

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~~insurance and promote homeownership. The program funding may not exceed the costs attributable to the portion of the project that is set aside to provide housing for the targeted population.~~

(b) ~~(c)~~ The projects ~~that~~ set aside at least 50 ~~80~~ percent of units for workforce housing ~~and at least 50 percent for essential services personnel and for projects that require the least amount of program funding compared to the overall housing costs for the project~~.

~~(9) Notwithstanding s. 163.3184(4)(b)-(d), any local government comprehensive plan amendment to implement a Community Workforce Housing Innovation Pilot Program project found consistent with this section shall be expedited as provided in this subsection. At least 30 days prior to adopting a plan amendment under this subsection, the local government shall notify the state land planning agency of its intent to adopt such an amendment, and the notice shall include its evaluation related to site suitability and availability of facilities and services. The public notice of the hearing required by s. 163.3184(11)(b)2. shall include a statement that the local government intends to use the expedited adoption process authorized by this subsection. Such amendments shall require only a single public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(4)(e). Any further proceedings shall be governed by s. 163.3184(5)-(13).~~

~~(10) The processing of approvals of development orders or development permits, as defined in s. 163.3164, for innovative community workforce housing projects shall be expedited.~~

(7) ~~(11)~~ The corporation shall award loans with a 1 ~~interest~~


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~~rates set at 1 to 3~~ percent interest rate for a term that does not exceed 15 years~~, which may be made forgivable when long-term affordability is provided and when at least 80 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services personnel~~.

~~(12) All eligible applications shall:~~

~~(a) For home ownership, limit the sales price of a detached unit, townhome, or condominium unit to not more than 90 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, and require that all eligible purchasers of home ownership units occupy the homes as their primary residence.~~

~~(b) For rental units, restrict rents for all workforce housing serving those with incomes at or below 120 percent of area median income at the appropriate income level using the restricted rents for the federal low-income housing tax credit program and, for workforce housing units serving those with incomes above 120 percent of area median income, restrict rents to those established by the corporation, not to exceed 30 percent of the maximum household income adjusted to unit size.~~

~~(c) Demonstrate that the applicant is a public-private partnership in an agreement, contract, partnership agreement, memorandum of understanding, or other written instrument signed by all the project partners.~~

~~(d) Have grants, donations of land, or contributions from the public-private partnership or other sources collectively totaling at least 10 percent of the total development cost or $2~~

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~~million, whichever is less. Such grants, donations of land, or contributions must be evidenced by a letter of~~ ~~commitment, agreement, contract, deed, memorandum of understanding, or other written instrument at the time of application. Grants, donations of land, or contributions in excess of 10 percent of the development cost shall increase the application score.~~

~~(e) Demonstrate how the applicant will use the regulatory incentives and financial strategies outlined in subsection (8) from the local jurisdiction in which the proposed project is to be located. The corporation may consult with the Department of Economic Opportunity in evaluating the use of regulatory incentives by applicants.~~

~~(f) Demonstrate that the applicant possesses title to or site control of land and evidences availability of required infrastructure.~~

~~(g) Demonstrate the applicant's affordable housing development and management experience.~~

~~(h) Provide any research or facts available supporting the demand and need for rental or home ownership workforce housing for eligible persons in the market in which the project is proposed.~~

~~(13) Projects may include manufactured housing constructed after June 1994 and installed in accordance with mobile home installation standards of the Department of Highway Safety and Motor Vehicles.~~

(8) ~~(14)~~ The corporation may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

~~(15) The corporation may use a maximum of 2 percent of the annual program appropriation for administration and compliance~~


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~~monitoring.~~

~~(16) The corporation shall review the success of the Community Workforce Housing Innovation Pilot Program to ascertain whether the projects financed by the program are useful in meeting the housing needs of eligible areas and shall include its findings in the annual report required under s. 420.511(3).~~

Section 13. Section 420.531, Florida Statutes, is amended to read:

420.531 Affordable Housing Catalyst Program.—

(1) The corporation shall operate the Affordable Housing Catalyst Program for the purpose of securing the expertise necessary to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, State Apartment Incentive Loan Program, State Housing Initiatives Partnership Program, and other affordable housing programs. To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. It must have as its primary mission the provision of affordable housing training and technical assistance, an ability to provide training and technical assistance statewide, and a proven track record of successfully providing training and technical assistance under the Affordable Housing Catalyst Program. The technical support shall, at a minimum, include training relating to the following key elements of the partnership programs:

(a) ~~(1)~~ Formation of local and regional housing partnerships as a means of bringing together resources to provide affordable

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housing.

(b) ~~(2)~~ Implementation of regulatory reforms to reduce the risk and cost of developing affordable housing.

(c) ~~(3)~~ Implementation of affordable housing programs included in local government comprehensive plans.

(d) ~~(4)~~ Compliance with requirements of federally funded housing programs.

(2) In consultation with the corporation, the entity providing statewide training and technical assistance shall convene and administer biannual, regional workshops for the locally elected officials serving on affordable housing advisory committees as provided in s. 420.9076. The regional workshops may be conducted through teleconferencing or other technological means and must include processes and programming that facilitate peer-to-peer identification and sharing of best affordable housing practices among the locally elected officials. Annually, calendar year reports summarizing the deliberations, actions, and recommendations of each region, as well as the attendance records of locally elected officials, must be compiled by the entity providing statewide training and technical assistance for the Affordable Housing Catalyst Program and must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the corporation by March 31 of the following year.

Section 14. Present subsection (7) of section 420.9073, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

420.9073 Local housing distributions.—

(7) Notwithstanding subsections (1)-(4), the corporation

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may withhold up to 5 percent of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to provide additional funding to counties and eligible municipalities for the construction of transitional housing for persons aging out of foster care. Funds may not be used for design or planning. Such housing must be constructed on a campus that provides housing for persons aging out of foster care. The corporation must consult with the Department of Children and Families to create minimum criteria for such housing. Any portion of the withheld funds not distributed or committed by the end of the fiscal year shall be distributed as provided in subsections (1) and (2).

Section 15. Paragraph (j) is added to subsection (10) of section 420.9075, Florida Statutes, to read:

420.9075 Local housing assistance plans; partnerships.—

(10) Each county or eligible municipality shall submit to the corporation by September 15 of each year a report of its affordable housing programs and accomplishments through June 30 immediately preceding submittal of the report. The report shall be certified as accurate and complete by the local government's chief elected official or his or her designee. Transmittal of the annual report by a county's or eligible municipality's chief elected official, or his or her designee, certifies that the local housing incentive strategies, or, if applicable, the local housing incentive plan, have been implemented or are in the process of being implemented pursuant to the adopted schedule for implementation. The report must include, but is not limited to:

(j) The number of affordable housing applications

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submitted, the number approved, and the number denied.

Section 16. Subsections (2) and (4) of section 420.9076, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

420.9076 Adoption of affordable housing incentive strategies; committees.—

(2) The governing board of a county or municipality shall appoint the members of the affordable housing advisory committee. Pursuant to the terms of any interlocal agreement, a county and municipality may create and jointly appoint an advisory committee. The local action adopted pursuant to s. 420.9072 which creates the advisory committee and appoints the advisory committee members must name at least 8 but not more than 11 committee members and specify their terms. Effective October 1, 2020, the committee must consist of one locally elected official from each county or municipality participating in the State Housing Initiatives Partnership Program and one representative from at least six of the categories below:

(a) A citizen who is actively engaged in the residential home building industry in connection with affordable housing.

(b) A citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing.

(c) A citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing.

(d) A citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing.

(e) A citizen who is actively engaged as a for-profit provider of affordable housing.

(f) A citizen who is actively engaged as a not-for-profit provider of affordable housing.

(g) A citizen who is actively engaged as a real estate professional in connection with affordable housing.

(h) A citizen who actively serves on the local planning agency pursuant to s. 163.3174. If the local planning agency is comprised of the governing board of the county or municipality, the governing board may appoint a designee who is knowledgeable in the local planning process.

(i) A citizen who resides within the jurisdiction of the local governing body making the appointments.

(j) A citizen who represents employers within the jurisdiction.

(k) A citizen who represents essential services personnel, as defined in the local housing assistance plan.

(4) Annually ~~Triennially~~, the advisory committee shall review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan of the appointing local government and shall recommend specific actions or initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. The recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions, including recommendations to amend the local government comprehensive plan and corresponding regulations, ordinances, and other policies. At a minimum, each advisory

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committee shall submit an annual ~~a~~ report to the local governing body and to the entity providing statewide training and technical assistance for the Affordable Housing Catalyst Program which ~~that~~ includes recommendations on~~, and triennially thereafter evaluates~~ the implementation of~~,~~ affordable housing incentives in the following areas:

(a) The processing of approvals of development orders or permits for affordable housing projects is expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.

(b) All allowable fee waivers provided ~~The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment~~ for the development or construction of affordable housing.

(c) The allowance of flexibility in densities for affordable housing.

(d) The reservation of infrastructure capacity for housing for very-low-income persons, low-income persons, and moderate-income persons.

(e) ~~The allowance of~~ Affordable accessory residential units ~~in residential zoning districts~~.

(f) The reduction of parking and setback requirements for affordable housing.

(g) The allowance of flexible lot configurations, including zero-lot-line configurations for affordable housing.

(h) The modification of street requirements for affordable housing.

(i) The establishment of a process by which a local government considers, before adoption, policies, procedures,

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ordinances, regulations, or plan provisions that increase the cost of housing.

(j) The preparation of a printed inventory of locally owned public lands suitable for affordable housing.

(k) The support of development near transportation hubs and major employment centers and mixed-use developments.

The advisory committee recommendations may also include other affordable housing incentives identified by the advisory committee. Local governments that receive the minimum allocation under the State Housing Initiatives Partnership Program shall perform an ~~the~~ initial review but may elect to not perform the annual ~~triennial~~ review.

(10) The locally elected official serving on an advisory committee, or a locally elected designee, must attend biannual regional workshops convened and administered under the Affordable Housing Catalyst Program as provided in s. 420.531(2). If the locally elected official or a locally elected designee fails to attend three consecutive regional workshops, the corporation may withhold funds pending the person's attendance at the next regularly scheduled biannual meeting.

Section 17. Subsections (5) and (6) are added to section 723.041, Florida Statutes, to read:

723.041 Entrance fees; refunds; exit fees prohibited; replacement homes.—

(5) A mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, or built before the park was damaged or destroyed.

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(6) This section does not limit the regulation of the uniform firesafety standards established under s. 633.206, but supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Section 18. Subsection (4) of section 723.061, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

723.061 Eviction; grounds, proceedings.—

(4) Except for the notice to the officers of the homeowners' association under subparagraph (1)(d)1., any notice required by this section must be in writing~~,~~ and must be posted on the premises and sent to the mobile home owner and tenant or occupant, as appropriate, by United States mail ~~certified or registered mail, return receipt requested~~, addressed to the mobile home owner and tenant or occupant, as appropriate, at her or his last known address. Delivery of the mailed notice is ~~shall be~~ deemed given 5 days after the date of postmark.

(5) If the park owner accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e), the park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing noncompliance. Any rent so received must be accounted for at the final hearing.

(6) A tenant who intends to defend against an action by the landlord for possession for noncompliance under paragraph

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(1)(a), paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) must comply with s. 723.063(2).

Section 19. Section 723.063, Florida Statutes, is amended to read:

723.063 Defenses to action for rent or possession; procedure.—

(1)(a) In any action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof, the mobile home owner may defend upon the ground of a material noncompliance with any portion of this chapter or may raise any other defense, whether legal or equitable, which he or she may have.

(b) The defense of material noncompliance may be raised by the mobile home owner only if 7 days have elapsed after he or she has notified the park owner in writing of his or her intention not to pay rent, or a portion thereof, based upon the park owner’s noncompliance with portions of this chapter, specifying in reasonable detail the provisions in default. A material noncompliance with this chapter by the park owner is a complete defense to an action for possession based upon nonpayment of rent, or a portion thereof, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the lot during the period of noncompliance with any portion of this chapter. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In any action by the park owner or a mobile home owner brought under subsection (1), the mobile home owner shall pay

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into the registry of the court that portion of the accrued rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court shall notify the mobile home owner of such requirement. The failure of the mobile home owner to pay the rent~~, or portion thereof,~~ into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the mobile home owner's defenses other than payment, and the park owner is entitled to an immediate default judgment for removal of the mobile home owner with a writ of possession to be issued without further notice or hearing thereon. If a motion to determine rent is filed, the movant must provide sworn documentation in support of his or her allegation that the rent alleged in the complaint is erroneous ~~as required herein constitutes an absolute waiver of the mobile home owner's defenses other than payment, and the park owner is entitled to an immediate default~~.

(3) When the mobile home owner has deposited funds into the registry of the court in accordance with ~~the provisions of~~ this section ~~and the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises~~, the park owner may apply to the court for disbursement of all or part of the funds or for prompt final hearing, whereupon the court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.

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Section 20. For the purpose of incorporating the amendment made by this act to section 420.5087, Florida Statutes, in a reference thereto, paragraph (i) of subsection (22) of section 420.507, Florida Statutes, is reenacted to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(i) Establish, by rule, the procedure for competitively evaluating and selecting all applications for funding based on the criteria set forth in s. 420.5087(6)(c), determining actual loan amounts, making and servicing loans, and exercising the powers authorized in this subsection.

Section 21. For the purpose of incorporating the amendment made by this act to section 420.5095, Florida Statutes, in a reference thereto, subsection (2) of section 193.018, Florida Statutes, is reenacted to read:

193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.—

(2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing

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affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.

Section 22. This act shall take effect July 1, 2020.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to housing; amending s. 125.01055, F.S.; authorizing a board of county commissioners to approve development of affordable housing on any parcel zoned for residential, commercial, or industrial use; amending s. 163.31771, F.S.; revising legislative findings; requiring local governments to adopt ordinances that allow accessory dwelling units in any area zoned for single-family residential use; amending s. 163.31801, F.S.; requiring counties, municipalities, and special districts to include certain data relating to impact fees in their annual financial reports; amending s. 166.04151, F.S.;


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authorizing governing bodies of municipalities to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use; amending s. 212.05, F.S.; providing the percentage of the sales price of certain mobile homes which is subject to sales tax; providing a sales tax exemption for certain mobile homes; amending s. 212.06, F.S.; revising the definition of the term "fixtures" to include certain mobile homes; amending s. 320.77, F.S.; revising a certification requirement for mobile home dealer applicants relating to the applicant's business location; amending s. 320.822, F.S.; revising the definition of the term "code"; amending s. 320.8232, F.S.; revising applicable standards for the repair and remodeling of mobile and manufactured homes; amending s. 367.022, F.S.; exempting certain mobile home park and mobile home subdivision owners from regulation relating to water and wastewater systems by the Florida Public Service Commission; revising an exemption from regulation for certain water service resellers; amending s. 420.5087, F.S.; revising the criteria used by a review committee when evaluating and selecting specified applications for state apartment incentive loans; amending s. 420.5095, F.S.; renaming the Community Workforce Housing Innovation Pilot Program as the Community Workforce Housing Loan Program to provide workforce housing for persons affected by the high cost of housing; revising the definition of the term

"workforce housing"; deleting the definition of the term "public-private partnership"; authorizing the Florida Housing Finance Corporation to provide loans under the program to applicants for construction of workforce housing; requiring the corporation to establish a certain loan application process; deleting provisions requiring the corporation to provide incentives for local governments to use certain funds; requiring projects to receive priority consideration for funding under certain circumstances; deleting a provision providing for the expedition of local government comprehensive plan amendments to implement a program project; requiring that the corporation award loans at a specified interest rate and for a limited term; conforming provisions to changes made by the act; amending s. 420.531, F.S.; specifying that technical support provided to local governments and community-based organizations includes implementation of the State Apartment Incentive Loan Program; requiring the entity providing training and technical assistance to convene and administer biannual workshops; requiring such entity to annually compile and submit certain information to the Legislature and the corporation by a specified date; amending s. 420.9073, F.S.; authorizing the corporation to withhold a certain portion of funds distributed from the Local Government Housing Trust Fund to be used for certain transitional housing; prohibiting such funds from being used for specified purposes; requiring that

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such transitional housing be constructed on certain campuses; requiring the corporation to consult with the Department of Children and Families to create minimum criteria for such housing; providing for the distribution of withheld funds; amending s. 420.9075, F.S.; revising requirements for reports submitted by counties and certain municipalities to the corporation; amending s. 420.9076, F.S.; beginning on a specified date, revising the membership of local affordable housing advisory committees; requiring the committees to perform specified duties annually instead of triennially; requiring locally elected officials serving on advisory committees, or their designees, to attend biannual regional workshops; providing a penalty; amending s. 723.041, F.S.; providing that a mobile home park damaged or destroyed due to natural force may be rebuilt with the same density as previously approved, permitted, or built; providing construction; amending s. 723.061, F.S.; revising a requirement related to mailing eviction notices; specifying the waiver and nonwaiver of certain rights of the park owner under certain circumstances; requiring the accounting at final hearing of rents received; requiring a tenant defending certain actions by a landlord to comply with certain requirements; amending s. 723.063, F.S.; revising procedures and requirements for mobile home owners and revising construction relating to park owners' actions for rent or possession; revising


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conditions under which a park owner may apply to a court for disbursement of certain funds; reenacting s. 420.507(22)(i), F.S., relating to powers of the Florida Housing Finance Corporation, to incorporate the amendment made to s. 420.5087, F.S., in a reference thereto; reenacting s. 193.018(2), F.S., relating to land owned by a community land trust used to provide affordable housing, to incorporate the amendment made to s. 420.5095, F.S., in a reference thereto; providing an effective date.

441058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment to Amendment (504774) (with title amendment)

Delete lines 338 - 355
and insert:
Section 10. Subsection (9) of section 367.022, Florida Statutes, is amended, and subsection (14) is added to that section, to read:
367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject

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to the provisions of this chapter, except as expressly provided:

(9) Any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water and wastewater service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

(14) The owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, as those terms are defined in s. 723.003, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 983 - 988

and insert:

manufactured homes; amending s. 367.022, F.S.; revising an exemption from regulation for certain water service resellers; exempting certain mobile home park and mobile home subdivision owners from regulation by the Florida Public Service Commission relating to water and wastewater systems; amending s. 420.5087,

THE FLORIDA LEGISLATURE

OFFICE OF THE PRESIDENT

OFFICE OF THE SPEAKER

March 21, 1991

Members of The Florida House
and The Florida Senate
The Capitol
Tallahassee, Florida

Dear Members:

Last fall the voters approved a constitutional amendment concerning the imposition of mandates on municipalities and counties. These provisions are now contained in Article VII, Section 18 of the Florida Constitution. Staff of the House and Senate have been working together over the past few weeks to recommend a set of guidelines for interpreting the new constitutional provisions. These guidelines are attached. Please read them carefully. It is our intention that both houses follow the interpretations contained in the attached document in dealing with any issues arising with regard to Article VII, Section 18 during the current session.

Sincerely,

Gwen Margolis
President

T.K. Wetherell
Speaker

SENATE 409 Capitol. Tallahassee. Florida 32399-1100 (904) 487-5229
HOUSE 420 Capitol. Tallahassee. Florida 32399-1300 (904) 488-1450

March 7, 1991

COUNTY AND MUNICIPALITY MANDATES ANALYSIS

The purpose of this document is to assist legislative staff in analyzing bills that potentially fall under Article VII, Section 18 of the Florida Constitution, the provision relating to county and municipality mandates. This constitutional provision contains three criteria which describe types of bills considered to be mandates on municipalities and counties. There are eight exemptions contained in subsection (d) which, if applicable, exempt the bill from the constitutional restrictions. In addition, under each criterion there are exceptions which, if met, also exclude the bill from the restrictions. For the second and third criteria, one of the exceptions is passage of the bill by a two-thirds vote of the membership of each house. For an exception to the first criterion, that vote must be coupled with a legislative determination of an important state interest.

In preparing a staff analysis, any bill which meets one or more of the criteria should be identified as a mandate, even if an exemption or an exception applies. The analysis should describe the issue causing the mandate and state the constitutional criterion which is met. If appropriate, a fiscal analysis of the required expenditures and/or revenue impacts should be provided. If one of the "substantive" exemptions or exceptions (other than the two-thirds vote) apply, this should be stated and explained. If the exemptions or exceptions do not apply, leaving the two-thirds vote as the only possibility for exception, this should also be stated.

OVERVIEW:

The accompanying chart provides a procedure for doing a mandates analysis. The bill should first be analyzed to determine if it or one of its provisions meet the constitutional criteria. If not, the bill is not a mandate. If one of the criteria is met, the analyst should then examine the exemptions. If one or more are applicable, the bill is exempt from the mandates requirements. If not, the exceptions under each applicable criterion should be examined. If any exception other than the two-thirds vote applies, this should be stated. If the only exception available is for the Legislature to pass the bill by a two-thirds vote, this should also be stated.

GENERAL CONSIDERATIONS:

* In analyzing a bill or amendment to a bill for an Article VII, Section 18 impact, each issue of the bill or amendment must be analyzed individually.

* The mandates analysis applies only to general laws and not to special laws (local bills).

* The requirements of Article VII, Section 18 apply only to cities and counties.

CRITERIA:

The bill should first be analyzed to determine if it or any of its provisions meet one or more of the mandates criteria. These are:

A. A law requiring cities or counties to spend funds or to take action requiring expenditure.

B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.

1. In analyzing this criterion, the term "in the aggregate" means that effects on cities and counties are to be considered together. It also means that decreases in the authority to raise revenues should be offset against increases is such authority.

2. The term "authority" applies to:

a) the power to levy a tax;
b) the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one;
c) the tax rate which can be levied; and
d) the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

This criterion indicates that the percentage of each shared state tax that the counties and cities receive cannot be reduced. Provisions that reduce the base of a shared tax while leaving the percentage shared with cities and counties unchanged, however, do not meet this criterion.

If it is determined, after an initial reading, that a bill falls within one of the above, the analysis outlined in the remainder of this paper should be performed. If it does not fall within one of these criteria, no further mandates analysis need be done.

EXEMPTIONS:

Determine whether the bill's provisions fall under one of the following exemptions set out in subsection (d) of Article VII, Section 18:

1. **Requires Funding of Pension Benefits Existing on January 8, 1991** -- This applies only to additional funding that is necessary to assure the actuarial soundness of pension funds in providing only those benefits that existed on January 8, 1991. In order to qualify for exemption, the funding cannot apply to an expansion of either specific benefits or classes of people receiving the benefits.

2. **Criminal law** -- This applies to any bill relating to the following:

   * Defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors.

   * Relating to the processes of arrest and pretrial detention.

   * Relating to defense and prosecution.

   * Relating to adjudication, sentencing, and implementation of criminal sanctions.

3. **Election Laws** -- Generally, this applies to any bill relating to the required processes and procedures of holding public elections.

4. **The General Appropriations Act**

5. **Special Appropriations Acts**

6. **Laws Re-authorizing but not Expanding Then-existing Statutory Authority** -- Look to authority existing at the time the bill would become effective. Where a bill would expand, in addition to re-authorize, only the re-authorizing provisions would be exempt. This exemption includes sunset bills, sundown bills, reviser's bills, re-adoptions of statutes, and laws extending repeal dates.

7. **Laws Having Insignificant Fiscal Impact** -- This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of $1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of $5 million statewide, but would generate $4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

8. **Laws Creating, Modifying, or Repealing Noncriminal Infractions** -- Apply the definition of "noncriminal violation" in s. 775.08, F.S.

If a bill or one of its provisions meets the definition or description of one of the exemptions above, the bill or provision is not subject to further Article VII, Section 18 analysis. However, the mandates provision and the exemption should still be discussed in the bill analysis.

EXCEPTIONS:

After determining that a bill or its provisions do not fall under one of the exemptions, the exceptions applicable to each relevant criterion should be analyzed. If one of the exceptions is applicable, this should be stated in the analysis. If no exception other than the two-thirds vote is applicable, this should also be stated.

A. <u>General bills requiring cities and counties to spend funds or to take action requiring expenditure.</u>

It is not feasible for the Legislature to analyze the effects of possible mandates legislation on each city and county individually. Thus, for purposes of legislative analysis and determination of the offsetting

appropriations or other funding sources as described below, analysis should be made on an aggregate basis for all counties and municipalities as a whole.

Cities and counties will have to comply with a provision requiring expenditures if:

1. **The Legislature Determines That It Fulfills an Important State Interest:**

   This determination should be made by the Legislature itself and not by staff. The most effective means of doing this would be the insertion of a provision into the bill.

2. **Condition #1 must be met <u>and</u> any one of the following exceptions:**

   a. Funds are appropriated that are estimated to be sufficient to fund such expenditure.

      As stated above, the question of whether this exception is met should be analyzed on an aggregate basis including all counties and municipalities.

   b. The Legislature authorizes <u>or has authorized</u> a county or city to enact, by a simple majority vote of the governing board, a funding source not available on 2/1/89. The source must be estimated to fund the expenditure.

      In addition to the granting of new authority to enact funding sources, this exception also includes the broadening of tax bases against which cities and counties already have the authority to levy taxes by a majority vote.

      As stated above, the question of whether this exception is met should be analyzed on an aggregate basis, including all counties and municipalities.

   c. The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

In analyzing this exception, the makeup of the group which should be considered "similarly situated" should first be determined. Once this determination has been made, the exception can be considered applicable if all members of the group are treated similarly, even though the group may only contain governmental entities or even only local governmental entities.

The determination of similarly situated should be independent of a local government's status as a local government. However, if only cities and counties are affected by the issue, this exception does not apply. If, on the other hand, by the nature of the issue in the bill being analyzed, only local governments (all local governments, not just cities and counties) could be affected and these are treated similarly, the exception is met. If there are entities in the private sector or in state government which also could be affected by the bill, but are not treated similarly because they are not local governments, or for other reasons not inherently connected to the issue being analyzed, the exception is not met.

An example of a bill in which the exception is met would be one affecting the Florida Retirement System (FRS). This system includes employees of the state government, school districts and local governments. As long as classes of employees were not deliberately manipulated to apply only to cities and counties, all in the system would be similarly situated and changes in retirement benefits would be excepted.

d. The expenditure is required to comply with a federal requirement or federal entitlement which contemplates action by cities or counties.

If any one of the exceptions (a) through (d) is met, no further analysis is necessary with respect to Article VII, Section 18. The bill is excepted from the provisions of that section as long as the Legislature also determines that an important state interest exists.

If none of the exceptions (a) through (d) are met, the Legislature must find an important state interest <u>and</u> the bill must pass by a 2/3 vote to effectively bind cities and counties.

B. <u>A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.</u>

There is only one exception applicable to this criterion. A bill determined to meet this criterion may only take effect if passed by 2/3 vote of each house.

C. <u>A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.</u>

The exceptions by which this criterion does not apply are:

1. Enhancements to state taxes shared with counties and municipalities enacted after 2/1/89. For example, assume that the base of a shared tax source has been expanded since 2/1/89 (and the percentage shared not reduced) so that cities and counties receive more money. It would be permissible under this exception for the Legislature to reduce the percentage shared with cities and counties up to the point where such governments would be receiving the same amount of money they would have received if the tax base had not been expanded.

2. During a fiscal emergency; or

3. If replacement state shared revenues sufficient to replace the aggregate loss are provided.

If exceptions (1), (2) or (3) are not satisfied, the bill must pass by a 2/3 vote of each house in order to take effect.

2020 AGENCY LEGISLATIVE BILL ANALYSIS
DEPARTMENT OF REVENUE

DL

BILL INFORMATION	
BILL NUMBER:	SB 998
BILL TITLE:	Housing
BILL SPONSOR:	Senator Hutson
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Community Affairs
2) Infrastructure and Security
3) Rules
4)
5)

CURRENT COMMITTEE
Community Affairs

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION
YEAR/BILL NUMBER/SPONSOR/LAST ACTION:

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 17, 2019
LEAD AGENCY ANALYST:	Debbie Longman (850) 617-8324

POLICY ANALYSIS

1. ANALYSIS OF EACH SECTION THAT AFFECTS THE DEPARTMENT OF REVENUE.

Section 1. through Section 4. (pp. 5-8): These sections do not affect the Department.

Section 5. Sales, storage, use tax. (pp. 8-14):

PRESENT SITUATION

Mobile homes that are required to be registered, licensed, titled, or documented in Florida or by the U.S. Government are considered tangible personal property and are subject to sales tax at a rate of 6 percent of the sales price.

Currently, if a taxpayer purchases a mobile home and then has it affixed permanently to land owned by the taxpayer, they may apply to the Department for a declaration of real property (Form DR-402). As part of the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer. The Department of Highway Safety and Motor Vehicles issues "RP" (real property) decals after a mobile home has been declared real property.

If a taxpayer purchases land on which a mobile home is permanently affixed (i.e., already declared real property), then no sales tax is due on the mobile home as it was categorized as real property at the time of sale.

EFFECT OF THE BILL

The bill amends s. 212.05(1)(a)1.a., F.S., so that mobile homes considered tangible personal property will be assessed sales tax at a rate of 6 percent on 50 percent of the sales price of the mobile home.

The bill adds language stating that a mobile home is not subject to sales tax if it is intended to be permanently affixed to the land and the purchaser signs an affidavit stating they intend to seek a "RP" (real property" sticker pursuant to s. 320.0815(2), F.S.

Section 6. Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax. (pp. 14-15):

PRESENT SITUATION

Mobile homes assessed as real property are exempt from sales tax. Mobile homes that are not qualified as real property are not exempt from sales tax.

EFFECT OF THE BILL

The bill adds language exempting mobile homes intended to be qualified and taxed as real property.

Section 7. through Section 24. (pp. 15-47): These sections do not affect the Department.

Section 25. (p. 47): Provides for an effective date of July 1, 2020.

2. **DOES THE DEPARTMENT EXPECT TO DEVELOP, ADOPT, MODIFY OR ELIMINATE ANY RULES, REGULATIONS, POLICIES, OR PROCEDURES?** ☐ YES ☒ NO

If yes, explain:	
Rule(s) impacted (provide references to F.A.C., etc.):	

3. **WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?** N/A

4. **DOES THE BILL REQUIRE THE DEPARTMENT TO SUBMIT, MODIFY OR DELETE ANY REPORTS, STUDIES OR PLANS?** ☐ YES ☒ NO

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

5. **ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** ☐ YES ☒ NO

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

6. **DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to local governments.

7. **DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**

Revenues:	The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to state government.
Expenditures: ***(only expenditure impacts on the Department are identified)***	☐ YES ☒ NO ☐ YES, BUT INSIGNIFICANT ☐ UNABLE TO DETERMINE See Additional Comments section below if it is determined there is a significant operational impact to the Department.
Does the legislation contain an appropriation to the Department?	☐ YES ☒ NO

8. **DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** The Department of Revenue does not conduct this analysis.

9. **DOES THE BILL INCREASE OR DECREASE TAXES, FEES OR FINES?** The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.

TECHNOLOGY IMPACT

If any, see attached Fiscal Impact Analysis.

FEDERAL IMPACT

If any, see Additional Comments section below.

ADDITIONAL COMMENTS

10. **STATUTE(S) AFFECTED:** Sections 125.01055, 163.31771, 163.31801, 166.04151, 212.05, 212.06, 320.77, 320.822, 320.8232, 367.022, 420.0007, 420.5087, 420.5095, 420.5098, 420.531, 420.9071, 420.9075, 420.9076, 723.041, 723.061, 723.063, 420.507, 193.018, and 420.9072, F.S.

11. **HAS BILL LANGUAGE BEEN ANALYZED EARLIER THIS SESSION?** ☐ YES ☒ NO
If no, go to #12. If yes:

    A. **Identify bill number or source.**

    B. **Were issues/problems identified?** ☐ YES ☐ NO

        a. **If yes, have they been resolved?** ☐ YES ☐ NO **If no, briefly explain.**

    C. **Are new issues/problems created?** ☐ YES ☐ NO **If yes, briefly identify.**

12. **DOES THE BILL PRESENT DIFFICULTY IN IMPLEMENTATION, ADMINISTRATION OR ENFORCEMENT?** ☒ YES ☐ NO

    If yes, describe administrative problems, technical errors, or other difficulties:

    - Under current law, in order for a taxpayer to have their mobile home declared as real property, the local property appraiser must certify that the mobile home is permanently affixed to land owned by the taxpayer. This bill would allow a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating they intend to have the mobile home declared as real property after the initial purchase.
        - The bill provides no process for verification that the purchaser completes the required process necessary for the mobile home to be declared as real property.
        - If the mobile home is not declared as real property, and remains tangible personal property, then the purchaser has failed to remit sales/use tax on the mobile home. Additionally, the mobile home may not be properly assessed for local property taxes.

13. **OTHER:** None

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/13/2020
Meeting Date

998
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Housing

Name Jerry Durham

Job Title President, Federation Manufactured Homeowners of Florida, Inc

Address 1101 S. Belcher Ave. Ste B
Street

Phone 727-539-7539

Largo FL 33777
City *State* *Zip*

Email joseph.durham@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FMO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-2020
Meeting Date

✓ 998
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Manufactured Housing

Name Jay Ayotte

Job Title Exec Director

Address _____ Phone _____
Street

City *State* *Zip* Email _____

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Manufactured Housing Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/20
Meeting Date

998
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Housing

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone 850-224-1400

Email andyg@floridarealtors.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 15 2019
Meeting Date

998
Bill Number (if applicable)

Topic SB 998

Amendment Barcode (if applicable)

Name Kody Glazer

Job Title Legal Director

Address _____
Street

Phone 850-509-5070

_____
City *State* *Zip*

Email glazer@flhousing.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Housing Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.13.2020
Meeting Date

SB 998
Bill Number (if applicable)

504774
Amendment Barcode (if applicable)

Topic Affordable Housing

Name Tonnette Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe Street
Street

Phone 850.922.4300

Tallahassee, FL 32301
City *State* *Zip*

Email tgraham@flcounties.com

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-13-2020
Meeting Date

998
Bill Number (if applicable)

504774
Amendment Barcode (if applicable)

Topic Affordable Housing

Name Jeff Branch

Job Title Legislative Advocate

Address _____ Phone 74-3655
Street

Tallahassee FL 32302 Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 1072
INTRODUCER:	Senator Wright
SUBJECT:	Redevelopment Trust Funds
DATE:	January 9, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Pre-meeting**
2.			FT	
3.			RC	

I. Summary:

SB 1072 exempts hospital districts from making annual payments into the redevelopment trust fund of a community redevelopment agency (CRA) if the CRA revised its community redevelopment plan on or after July 1, 2016, to extend the expiration date of the CRA.

In 2016, the Legislature exempted hospital districts from making annual payments to CRAs created on or after July 1, 2016.

The bill will result in a reduction of tax increment financing (TIF) revenues for CRAs created before July 1, 2016, that currently receive TIF contributions from hospital districts and choose to extend the current expiration date of the agency.

II. Present Situation:

The Community Redevelopment Act

The Community Redevelopment Act of 1969 authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas.[1] The act generally considers slums and blighted areas to be locations with deteriorated structures causing economic distress or endangerment to life or property,[2] and also, areas having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime.[3]

[1] Chapter 163, F.S., part III.
[2] Sections 163.355 and 163.360(1), F.S.
[3] Section 163.340(7), F.S.

Creation of Community Redevelopment Agencies

Either a county or a municipal government may create a CRA. Before creating a CRA, a county or municipal government must adopt a resolution with a "finding of necessity." This resolution must make legislative findings "supported by data and analysis" that the area to be included in the CRA's jurisdiction is either blighted or a slum and that redevelopment of the area is necessary to promote "the public health, safety, morals, or welfare" of residents.[4]

As of January 2, 2020, there are 223 CRAs in Florida, which is an approximate 30 percent increase over the past decade.[5]

Community Redevelopment Plans

A community redevelopment plan must be in place before a CRA can engage in operations.[6] Community redevelopment plans must conform to the comprehensive plan for the county or municipality under the Community Planning Act.[7] The plan should indicate land-use policies and strategies for redeveloping a blighted or slum area.[8]

The CRA must submit the community redevelopment plan to the governing body that created the CRA as well as to each taxing authority that levies ad valorem taxes on the taxable real property contained in the boundaries of the CRA.[9] The local governing body that created the CRA must hold a public hearing before the plan is approved.[10]

Time Certain for Completing Community Redevelopment Plans

Each community redevelopment plan must provide a time certain for completing all redevelopment financed by increment revenues.[11] The time certain must occur no later than 60 years after the date in which the plan was approved or adopted or no later than 30 years from when the plan was amended, whichever is lesser.[12] Alternatively, for any agency created after July 1, 2002, the time certain for completing all redevelopment financed by increment tax revenues must occur within 40 years after the fiscal year in which the plan is approved or adopted.[13] Thus, taxing authorities are only required to make annual appropriations to CRAs for a period not to exceed 40 years or 60 years, relative to the date in which a CRA approves or adopts its redevelopment plan.

[4] Section 163.355, F.S.
[5] Compare of Dept. of Economic Opportunity, Special District Accountability Program, Official List of Special Districts Online, *available at*: http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited January 2, 2020)
[6] Section 163.360(1), F.S.
[7] *Id.*
[8] Section 163.360(2), F.S.
[9] Section 163.360(5), F.S.
[10] Section 163.360(6), F.S.
[11] Section 163.361(10), F.S.
[12] Section 163.387(2)(a), F.S.
[13] Id.

Redevelopment Trust Fund

CRAs are not permitted to levy or collect taxes. The local governing body of a CRA may establish a community redevelopment trust fund, which receives contributions from other governmental entities through tax increment financing (TIF). The amount of TIF available to a CRA in a given year is equal to 95 percent of the difference between:

- The amount of ad valorem taxes levied in the current year by each taxing authority, excluding any debt service millage, on taxable real property within the boundaries of the community redevelopment area; and
- The amount of ad valorem taxes that would have been produced by levying the current year's millage rate for each taxing authority, excluding any debt service millage, on taxable real property within the boundaries of the community redevelopment area at the total assessed value of the taxable real property before the effective rate of the ordinance providing for the redevelopment trust fund.[14]

Each taxing authority must transfer TIF funds to the redevelopment trust fund of the CRA by January 1 of each year. If there are any outstanding loans, advances, or indebtedness after completion of a community redevelopment plan, the local governing body that created the CRA must continue transfers to the redevelopment trust fund until the debt has been paid.[15]

If a taxing authority does not transfer the TIF funds to the redevelopment trust fund, the taxing authority is required to pay a penalty of 5 percent of the TIF amount to the trust fund as well as 1 percent interest per month for the outstanding amount.[16] A CRA may choose to waive these penalties in whole or in part.

A CRA may spend funds deposited in its redevelopment trust fund according to an annual budget adopted by the board of commissioners of the CRA.[17] A CRA created by a municipality must submit a copy of its budget (as well as any amendments) to the county within 10 days of adoption. CRA funds may only be used for:

- Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency;
- Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the CRA for such expenses incurred before the redevelopment plan was approved and adopted;
- Acquisition of real property in the redevelopment area;
- Clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370, F.S.;
- Repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness;
- All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding

[14] Section 163.387(1)(a), F.S.
[15] Section 163.387(3)(a), F.S.
[16] Section 163.387(2)(b), F.S.
[17] Section 163.387(6), F.S.

of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness;
- Development of affordable housing within the community redevelopment area;
- Development of community policing innovations; and
- Expenses that are necessary to exercise the powers granted under s. 163.370, F.S., as delegated under s. 163.358, F.S.

If any funds remain in the redevelopment trust fund on the last day of the fiscal year, the funds must be:
- Returned to each taxing authority on a pro-rata basis;
- Used to reduce the amount of any indebtedness to which increment revenues are pledged;
- Deposited into an escrow account to later reduce any indebtedness to which increment revenues are pledged; or
- Appropriated to a specific redevelopment project according to an approved community redevelopment plan; the project must be completed within 3 years from the date of such appropriation.[18]

Governmental Entities Exempt from Trust Fund Appropriations

The following taxing authorities are exempt from contributing to the CRA:[19]
- A special district that levies ad valorem taxes on taxable real property in more than one county.
- A special district for which the sole available source of revenue the district has the authority to levy is ad valorem taxes at the time the ordinance is adopted.
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984.
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority.
- A water management district created under s. 373.069, F.S.
- A special district specifically exempted by the local governing body that created the CRA, if the exemption is made following the requirements of s. 163.387(2)(d), F.S., which includes a public hearing, public notice, and an interlocal agreement.
- For a community redevelopment agency created on or after July 1, 2016, a hospital district that is a special district as defined in s. 189.012, F.S.

Hospital Districts

First created in the 1920s to provide indigent care for county residents, hospital districts now differ greatly in roles, powers, and governance.[20] There are currently 27 hospital districts in the

[18] Section 163.387(7), F.S.
[19] Section 163.387(2)(c), F.S.
[20] Florida TaxWatch, *Florida's Fragmented Hospital Taxing District System in Need of Reexamination*, Briefings (Feb. 2009), *available at* http://www.floridataxwatch.org/resources/pdf/02242009HospitalDistricts.pdf (last visited January 2, 2020).

state.[21] As an independent special district, hospital districts may have both taxing and bonding authority.[22] Revenues generated from the taxes and bonds issued by a hospital district are utilized to fund local hospitals and healthcare services.[23] Hospital districts are not required to appropriate funds to CRAs that are created on or after July 1, 2016.[24]

The following chart contains the tax increment financing contribution as well as ad valorem tax revenue, for two hospital districts for the three most recent fiscal years:[25]

Year	District	Ad Valorem Tax Revenue	TIF Contribution
2020	North Broward	$139,272,000	$4,664,000
2019	North Broward	$136,892,000	$4,470,000
2018	North Broward	$147,736,000	$4,577,000
2020	Halifax	$6,471,854	$345,329
2019	Halifax	$6,020,474	$321,252
2018	Halifax	$5,886,194	$440,982

III. Effect of Proposed Changes:

The bill amends s. 163.387, F.S., to provide an exemption for hospital districts from making payments into the redevelopment trust fund of a CRA if the CRA revised its community redevelopment plan on or after July 1, 2016, to extend the expiration date of the agency.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[21] Department of Economic Opportunity, Official List of Special Districts Online, *available at* https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/selectfunctions.cfm (last visited January 2, 2020).
[22] Section 189.031 (3)(b), F.S.
[23] *See* Marion County Hospital District, *About Us*, available at: https://mchdt.org/about-us/ (last visited January 2, 2020).
[24] Section 163.387(2)(c)7, F.S.
[25] *See* Broward Health, *FY2020 Final Budget*, available at https://www.browardhealth.org/pages/board-calendar (last visited January 8, 2020); *see also* Halifax Health District, *FY 2020 Budget* and *FY 2019 Budget*, available at https://www.halifaxhealthdistrict.org/ (last visited January 8, 2020).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on community redevelopment agencies and an indeterminate positive fiscal impact on hospital districts.

Community redevelopment agencies extending their time certain after July 1, 2016, will not be able to rely on hospital districts for trust fund contributions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.387 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

CourtSmart Tag Report

Room: SB 301 **Case No.:** **Type:**
Caption: Senate Comimittee on Community Affairs **Judge:**

Started: 1/13/2020 3:32:39 PM
Ends: 1/13/2020 4:14:18 PM **Length: 00:41:40**

3:32:37 PM Meeting is called to order by Vice Chair Farmer
3:32:47 PM SB 988 is introduced
3:36:52 PM Senator Simmons has question about Amenndment 504774 to SB 998
3:37:52 PM Sen. Hutson answers
3:38:06 PM Sen. Simmons Thanks Sen. Hutson
3:39:06 PM Sen. Broxson has question
3:39:21 PM Sen. Hutson answers (Still on #504774)
3:40:03 PM Amenment to amandment, #441058 is explained by Sen. Hutson
3:41:09 PM AA 441058 passes
3:41:46 PM Appearance by Jeff Branch, FL League of Cities
3:42:58 PM Appearance by Tonnette Graham, FL League of Counties
3:44:00 PM Back on Amendment as Amended
3:44:40 PM Sen. Pizzo has question
3:47:43 PM Amendment 504774 passes
3:48:42 PM Appearance by Jerry Durham, FMO
3:50:23 PM Sen. Pizzo has question
3:51:22 PM Appearance by Jim Ayotte, waives in support
3:52:02 PM Appearance by Andy Gonzalez and Kody Glaze; waive in support
3:52:35 PM Sent. Pizzo has question
3:52:55 PM Sen. Hutson replies
3:53:00 PM Sen. Hutson gives closing statement
3:53:40 PM Roll is Called
3:53:46 PM SB 998 is reported favorably with CS
3:53:54 PM SB 630 is introduced by Sen. Mayfield
3:54:30 PM Appearance by Christine Hunschofsky waives in support
3:55:35 PM Appearance by Mark Ryan
3:55:44 PM Appearance by Kloee Ciuperger waives in support
3:56:33 PM Mark Lander waives in support
3:56:42 PM Tonnette Graham waives in support
3:56:55 PM Laura Boehmer waives in support
3:57:08 PM Brian Sullivan waives in support
3:57:23 PM David Collen waives in support
3:57:41 PM Sen. Mayfield gives closing statement
3:58:04 PM Roll is called
3:58:08 PM SB 630 reported favorably
3:58:27 PM SB 566 is introduced by Sen. Bracy
3:58:42 PM Amendment 370398 to SB 566 is explained
3:59:42 PM Amendment 370398 passes
4:00:09 PM Barbara Devane waives in support
4:00:30 PM Ida Eskamani waives in support
4:01:11 PM Sen. Simmons has comment
4:02:15 PM Sen. Bracy closes
4:02:49 PM Roll is called
4:03:12 PM SB 566 is reported favorable/CS
4:03:30 PM CS/ SB 580 is introduced by Sen. Bracy
4:04:28 PM Sen. Pizzo has question
4:06:19 PM Sen. Broxson has question
4:07:19 PM Amendment 917052 is explained by Sen. Bracy
4:07:55 PM Amendment 917052 passes favorably
4:08:31 PM Amendment 246766 is explained by Sen. Bracy
4:08:56 PM Amendment 744604 is introduced by Sen. Bracy
4:09:40 PM Amendment 744604 passes favorably

4:09:55 PM Back to SB 580 as amendment
4:10:12 PM Haily Busch waives in support
4:10:18 PM Lindsay Cross waives in support
4:10:27 PM David Cullen waives in support
4:10:34 PM Appearance by Travis Moore; waives in support
4:10:58 PM Scott Mccoy waives in support
4:11:27 PM Appearance by Karen Woodall; waives in support
4:12:23 PM Sen. Bracy makes closing statement
4:13:24 PM Roll is called
4:13:38 PM SB 580 passes favorable/CS
4:13:48 PM Agenda is concluded
4:13:59 PM Committee meeting ends